XIV 118

2273. Indian Penal code by F. Currie. 1868.

Sub: L&L — Criminal Law — Penal Code — India — 1868.

WEST BENGAL SECRETARIAT LIBRARY

IE

ENAL CODE,

LV OF 1860,

BENGAL SECRETARIAT
LIBRARY

WITH

RT, CALCUTTA; HIGH COURT, MADRAS;
GRA; JUDICIAL COMMISSIONERS
AUB, CENTRAL PROVINCES,
AND OUDH.

BY

NDALL CURRIE, ESQ.,
COMMR., OUDH; OFFG. JR. SECY. TO THE CHIEF COMMR. OF OUDH.

Calcutta:
PUBLISHED BY MESSRS. WYMAN BROS.,
1A, HARE STREET.

1868.

343
C976

PRINTED BY E. M. LEWIS,
CALCUTTA CENTRAL PRESS COMPANY, 1
5, COUNCIL HOUSE STREET.

3881

E.

	Section.
ELEPHANT	
killing, poisoning, maiming, or rendering useless an... ...	429
ERASURE	
of mark on a Government stamp, showing it to have been used before	263
ESCAPE	
public servant allowing, of Prisoner of State or War ...	128, 129
aiding of, Prisoner of State or War ...	130
if he has escaped from custody, or his apprehension has been ordered	216
public servant intentionally suffering, of person accused ...	221
of person under sentence	222
negligently suffering, of person charged or convicted ...	223
making, or attempting to make, from lawful custody ...	224
EUROPEAN,—*See* AMERICAN	
EVIDENCE	
of an offence, causing it to disappear	201
destroying document, to prevent its being used as ...	204
EXPLANATION	
of words and terms	6-52
EXPLOSIVE SUBSTANCE	
negligence with respect to	286
causing *hurt* by use of	324
grievous hurt by use of	326
using, to cause mischief	436
to injure a decked vessel of more than 20 tons ...	437, 438
POSING	
nd abandoning a child under five years of age	317
TION	
tion of the term	383
hurt for purposes of...	327
hurt for the purposes of	329
for simple	384
mmit, by putting a person in fear of injury ...	385
putting person in fear of death or *grievous hurt* ...	386
mit, by putting in fear of death or *grievous hurt*	387
ng in fear of accusation of offence ...	388
putting in fear of accusation of offence ...	389
ry	390
of property necessary	*Note.* 383
... ...	192
vant	177
r to injury of another ...	182
mitted	203
...	181
...	199
...	20
	1

XIV 118

	Section.	Page.
E		
ering a decree for a sum not due	208	117
aining a decree for a sum not due...	210	*ib.*
ulent...	423	240
becoming party to a, with false statement of consider-	423	*ib.*
lse statement as to persons for whose benefit it is to	*ib.*	*ib.*
ATION		
s constitutes the offence	499	282-287
nishment for simple	500	288
nting or engraving matter known to be defamatory ...	501	*ib.*
ling printed or engraved substance having defamatory matter	502	*ib.*
EDATION		
mmitting, on territories in alliance or at peace with the Queen	126, 127	63, 64
RTION		
etting, of soldier or sailor	135, 137	67, 68
rbouring deserter	136	67
ncealing deserter on board merchant vessel	137	68
TA	*Note.* 309	172
STY		
ion of the word	24	11
OR		
or using criminal force, with intent to	355	
or to outrage modesty of a woman ...	354	
MENT		
at the word denotes	29	
blic servant framing incorrect, punishment of ...	167	
t producing or delivering up, punishment for ...	17	
struction of, to prevent production in Court, &c.		
bricating as false evidence		
false document," what constitutes the making of a ...		
forged document," what constitutes a		
thholding or not producing it on a false pretence is not same as secreting such...		
NAGE		
structing, by mischief		
ING		
h or negligent, showing want of regard for human		
tion of		
dulterated ...		
drug for another, knowin		

	Section.	Page.
FALSE EVIDENCE		
who is said to give	191	102
may be done either verbally or in writing	*ib.*	*ib.*
who is said to fabricate	192	104
attempt to fabricate false, before Police, how punishable ...	*Note.* 193	105
FEELING		
wounding religious, &c.	295, 298	160, 161
FIGHTING		
when it constitutes an "affray"	159	77
punishment for	160	78
FINDER		
of lost property when punishable as misappropriating it ...	403	227
FINE		
amount of, when unlimited	63	23
imprisonment in default of payment of	64	*ib.*
limit to term of, where offence itself punishable with imprisonment	65	*ib.*
may be of what kind	66	*ib.*
limit in term of, if offence is punishable with fine only ...	67	24
terminates on payment of fine or of proportional part ...	68, 69	*ib.*
within what time may be levied	70	25
FIRE		
negligence, &c., as to	285	156
using, to cause mischief	435, 436	245, 246
to injure a decked vessel of more than 20 tons	438	*ib.*
FOOD		
adulteration of	272	152
selling, &c., adulterated	273	153
FORCE		
who is said to use	349	192
FORCED LABOR		
exacting	374	205
FORFEITURE		
sentence of, renders offender incapable of acquiring property ...	61	22
adjudged by Court in certain cases	62	*ib.*
of property for waging war against Government	121, 122	61, 62
used in, or acquired by, committing depredation on a power in alliance with Government, &c.	126, 127	63, 64
fraudulent removing, &c., property to avoid	206	116
receiving or claiming property to avoid	207	*ib.*
public servant disobeying the law to screen property from ...	217	126
framing incorrect record, &c., to do so	218	127
FORGED DOCUMENT		
what constitutes a	464	260
what sufficient to prove forgery	*Note.* 463	*ib.*
punishment for using as genuine a, not punishable under Section 465	*Note.* 465	264
FORGE		
definition of the offence	463, 464	259, 260
punishment for, if simple	465	264

	Section.
FORGERY—(*Continued.*)	
of a record, &c., of a Court of Justice	466
of register of birth, baptism, marriage, or burial	*ib.*
of a will or valuable security	467
of authority to receive money or transfer, &c.	*ib.*
if for the purpose of cheating	468
harming any one's reputation	469
using forged document	471
making or possessing a counterfeit plate or seal with intent, &c....	472, 473
having possession of a forged document	474
counterfeiting a device or mark for authenticating documents ...	475, 476
destroying, &c., or cancelling, &c., a will	477
a valuable security	*ib.*
authority to adopt	*ib.*
FRAUDULENT	
transfer, &c., of property to prevent seizure	206
claim to property to prevent seizure	207
suffering a decree for a sum not due	208
taking a decree for a sum not due	210
FRAUDULENT DISPOSITIONS OF PROPERTY	
removal or concealment, &c., of property to defraud creditors ...	421
preventing a debt due to offender from being made available to creditors	422
executing a deed with false statement of consideration ...	423
fraudulent concealment or removal of property generally ...	424
FRAUDULENTLY	
meaning of the word	25
FUNERAL	
ceremonies disturbing assembly for performance of	297
G.	
GESTURE	
making a, to wound religious feelings of another	298
when it may amount to an assault	351
GOOD FAITH	
definition of	52
GOVERNMENT.	
what the word denotes	17
GOVERNMENT OF INDIA	
what the words denote	16
GOVERNMENT STAMP	
counterfeiting a	255
possessing instrument or material used for counterfeiting a ...	256
making, or selling, &c., instrument for counterfeiting a ...	257
selling, &c., a counterfeit...	258
possessing a counterfeit	259
using as genuine one known to be counterfeit	260
where a, has been used, effacing writing with intent to cause loss to Government	261
using one known to have been used before, with intent, &c. ...	262
erasure of mark upon, denoting that it has been used before with intent, &c.	263

	Section.	Page.
GOVERNOR-GENERAL		
assault on, with intent to compel or restrain exercise of any lawful power	124	149
attempt to overawe or restrain by unlawful assembly ...	*ib.*	*ib.*
GOVERNOR OF A PRESIDENCY		
assault on, with intent to compel or restrain exercise of lawful power	124	62
attempt to overawe by unlawful assembly, &c.	*ib.*	*ib.*
GRATIFICATION		
meaning of the word	161	80
public servant taking a, improperly	*ib.*	*ib.*
accepting, &c., for *corruptly* influencing a public servant ...	162	82
for using *personal influence* with public servant	163	*ib.*
abetment by public servant of the taking or giving of a ...	164	83
public servant taking, &c., a thing without adequate consideration for it	165	*ib.*
accepting, &c., to screen offender, or abandon prosecution ...	213	121
...ing, &c., in consideration of screening offender, &c. ...	214	122
...OUS HURT		
...apping a person in order to do him	367	202
...H		
H.		
...URING		
...risoner of State or War who has escaped	130	65
...a deserter	136	67
...offender to screen him from punishment	212	120
...no offence, if offender is husband or wife of harbourer ...	*ib.*	*ib.*
...ffender who has been convicted, or whose apprehension has been ...dered	216	125
...ence, if offender is husband or wife of harbourer ...	*ib.*	*ib.*
...g, poisoning, maiming, &c., a	429	243
...BREAKING		
...contitutes the offence of	445	250
...punished, if simple	453	255
...order to commit another offence punishable with imprisonment	454	*ib.*
...th preparation to cause hurt or restraint, &c. ...	455	256
...panied by causing *grievous hurt*, &c., while committing it	459	258
...USE BREAKING BY NIGHT		
what constitutes the offence of	446	253
how punished, if simple	456	256
if in order to commit another offence punishable by imprisonment	457	*ib.*
if with preparation to cause hurt or restraint, &c. ...	458	257
HOUSE-TRESPASS		
what constitutes the offence of	442	428
how punished, if simple	448	253
if in order to commit another offence punishable with death ...	449	*ib.*
an offence punishable with transportation for life, &c. ...	450	254
an offence punishable with imprisonment, &c.	451	*ib.*
if with preparation for causing hurt, &c., or restraint, &c. ...	452	*ib.*

	Section.	Page.
HURT		
who is said to cause it	319	176
voluntarily causing, what is...	321	179
punishment for	323	180
by using dangerous weapons, &c.	324	*ib.*
when done for extortion, or to force a person to do an illegal act	327	182
or to extort confession	330	183
or to obtain restoration of property	*ib.*	*ib.*
or to deter public servant from doing his duty	332	185
when done on grave and sudden provocation	334	186
when caused by act shewing want of regard for human life ...	337	187
grievous, what is	320	178
voluntarily causing grievous, what is	322	[illegible]
punishment for	325	
by dangerous weapons, &c.	326	
while committing dacoity or robbery	397	
when done to extort property or to force, to do an illegal act ...	329	
or to extort confession or to compel restoration of property ...	331	
to public servant to deter him from doing his duty	333	
when done on provocation, &c.	335	
by an act shewing want of regard for the safety of others ...	338	
HUSBAND		
may harbour or conceal wife offender	212, 216	
I.		
IDIOT		
act of, when no offence	84	
act done for benefit of, when no offence	89	
cannot "consent"	90	
right of private defence against act of	98	
causing an, to execute or alter a document, &c., is forgery ...	464	
ILLEGAL		
application and meaning of the word	43	
ILLICIT INTERCOURSE		
abduction of woman in order to force her to	366	
IMPRISONMENT		
is rigorous or simple	53	
rigorous applied to prisoner under sentence of transportation ...	58	
when it may be partly rigorous and partly simple ...	60	
in default of payment of fine	64, 65, 66	
is in excess of all other imprisonment	*ib.*	
how limited	67, 68, 69	
solitary, when and to what extent	73	
in default, does not relieve from payment of fine ...	*Note.* 70	
INFECTION		
negligent act likely to spread	269	151
malignant act likely to spread	270	*ib.*
disobeying Quarantine rules	271	152
INFORMATION		
omission to give, to public servant	176	91
giving false, to public servant	177	92
with intent to cause a public servant to use his power to injury of another	182	94

	Section.	Page.
INJURY		
what the word denotes	44	16
INSANE—*see* IDIOT		
INSUBORDINATION		
abetting act of, in Soldier or Sailor	138, 139	68
INSULT		
provoking breach of the peace by	504	290
to modesty of a woman, using word or gesture, &c., for the purpose of	509	292
INTERRUPTION		
to public servant in a judicial proceeding	228	134
INUNDATION		
causing by mischief, with damage to, amount of, &c. ...	432	244
INTIMIDATION		
"criminal," what constitutes the offence of	503	289
punishment for, if simple	506	290
if threat be of grievous hurt or death, &c.	*ib.*	*ib.*
if committed by anonymous communication	507	291
inducing, &c., a person to do an act by making him believe he will incur the Divine displeasure if he does not	508	*ib.*
INTOXICATION		
when it prevents act or omission from being an offence ...	85, 86	34
must be involuntary to have that effect	*ib.*	*ib.*
presumption of knowledge or intent against man in state of ...	86	*ib.*
person laboring under, cannot "consent"	90	37
right of private defence against person laboring under ...	98	41
causing a person to execute or alter a document while in a state of, is forgery	464	260
causing annoyance while in a state of	510	292
IRRIGATION		
injuring	430	244
J.		
JUDGE		
meaning of the word	19	6
a magistrate may be a	*ib.*	*ib.*
or a member of a punchayet may be a	*ib.*	*ib.*
every, is a "public servant"	21	7
JUDGMENT		
may be given that it is doubtful of which of several offences a person is guilty	72	26
JUDICIAL PROCEEDING		
explanation of the term	193	105
false evidence in	191, 195	102, 109
public servant making order, &c., contrary to law in ...	219	127
insulting or interrupting public servants in any stage of a ...	228	134
JURY		
trial by jury does not extend to certain offences	*Note. Chap IX.*	79

	Section.	Page.
JURYMAN		
is a "public servant"	21	7
personation of a	229	135
JUSTICE		
public offences against	191–229	102–135

K.

KIDNAPPING		
is of two kinds	359	199
from British India	360	*ib.*
from lawful guardianship	361	20[illegible]
where there is a *bonâ fide* belief in the right to the custody of a child	*ib.*	
when it is *abduction*	362	
punishment for, in ordinary cases	363	
where person if kidnapped to be murdered	364	
to be wrongfully confined	365	
where a woman is kidnapped that she may be compelled to marry, &c.	366	[illegible]
when in order to subject person to grievous hurt, slavery, &c. ...	367	
concealing or confining kidnapped person	368	
kidnapping child to steal from its person	369	20[illegible]
buying or selling, &c., a slave	370, 371	203, 20[illegible]

L.

LAND-MARK		
destroying or removing one, fixed by public servant ...	434	245
LAWS		
regarding duties and responsibilities of landholders and their agents	*Note.* 176	92
LAWFUL GUARDIAN		
who is included in the term	361	200
LEGAL REMUNERATION		
meaning of the term	161	80
LIEUTENANT-GOVERNOR		
assault on	124	62
attempt to overawe	*ib.*	*ib.*
LIFE		
what the word denotes	45	17
human, causing hurt by act shewing want of due regard for ...	337	187
causing grievous hurt	338	*ib.*
LIGHT		
exhibiting a false	281	155
LIGHTHOUSE		
destroying or removing, &c.	433	245
LOCAL LAW		
meaning of the term	42	16
LOST PROPERTY		
finder of, when punishable for misappropriating	403	227

	Section.	Page.
LUNATIC		
See *Idiot Insane.*		
LURKING HOUSE-TRESPASS		
definition of the offence	442, 443	248, 249
punishment for, if simple	453	255
punishment for, if in order to commit an offence punishable with imprisonment...	454	*ib.*
if with preparation to cause hurt or restraint, &c.	455	256
if accompanied by causing grievous hurt, &c.	459	258
LURKING HOUSE-TRESPASS BY NIGHT		
what constitutes the offence	444	250
how punished, if simple	456	256
if in order to commit another offence punishable with imprisonment	457	*ib.*
with preparation to cause hurt or restraint, &c.	458	257
M.		
MACHINERY		
negligent conduct as to, in possession or charge of offender ...	287	157
MAGISTRATE		
See *Judge.*		
MAN		
meaning of the word	10	4
MARK		
making or counterfeiting a mark in any material used for authenticating a will or valuable security, &c.	475	269
making &c. a mark in any material used for authenticating a document other than a will or valuable security, &c. ...	476	244
counterfeiting, ordinarily used by a public servant to denote the manufacture, &c. of property	481	245 155
MARRIAGE		
abducting or kidnapping a woman in order to compel ...	366	202
forging register of	466	264
inducing cohabitation by falsely making it be believed that a lawful marriage has taken place	493	278
again during the life-time of a husband or wife	494	279
if with concealment of the former marriage	495	*ib.*
ceremonies gone through fraudulently	496	280
MARRIED WOMAN		
committing adultery with	497	*ib.*
enticing or taking away, or concealing, &c. a, with intent, &c. ...	498	281
MEASURE		
false, using a	264, 265	149
being in possession of, with knowledge and intent	266	150
making or selling, with knowledge and intent	267	*ib.*
MEMBER OF COUNCIL		
assault on	124	62
attempt to overawe	*ib.*	*ib.*
MINT		
person employed in, causing coin to be of wrong weight, ...	211	141
unlawfully taking a coining instrument from a	245	*ib.*

	Section.	Page.
MISAPPROPRIATION		
of moveable property	403	227
of a deceased person	404	229
MISCARRIAGE		
causing	312, 313, 314	173, 174
a woman may commit this offence on herself	312	173
punishment for causing, in ordinary cases	*ib.*	*ib.*
if done without woman's consent	313	174
causing death in attempt to procure	314	*ib.*
doing any act to prevent a child being born alive	315	175
causing death of quick unborn child	316	*ib.*
MISCHIEF		
definition of the offence	425	241
punishment for, when simple	426	243
if damage done amounts to 50 Rupees	427	*ib.*
by killing, maiming, &c. an animal within 10 Rupees ...	428	*ib.*
by killing, maiming, &c. an elephant, camel, horse, mule, buffalo, bull, cow, or ox	429	*ib.*
any other animal worth more than 50 Rupees	*ib.*	*ib.*
by diminishing supply of water, &c.	430	244
by injuring public work, bridge, navigable river, &c. ...	431	*ib.*
by causing inundation, or obstructing drainage	432	*ib.*
by destroying or moving &c. light house, sea mark &c., ...	433	245
by destroying &c. land-mark fixed by public servant ...	434	*ib.*
by using fire or explosive substance with intent, &c. ...	435	*ib.*
with intent to destroy a house, &c.	436	246
committed on a decked vessel of 20 tons burden	437	*ib*
if by fire or explosive substance	438	*ib*
running vessel ashore to commit theft of property	439	247
committed with preparation for causing death or grievous hurt,...	440	*ib.*
carryin... hurt, or wrongful restraint	*ib.*	*ib*
obstructin... or fear of death, hurt, or restraint	*ib.*	*it*
injuring with respect to a will	477	27[illegible]
end... valuable security	477	*i[illegible]*
MISDEMEANOUR		
compounding a private	*Note,* 352	1[illegible]
MISTAKE OF FACT		
when act done by reason of, no offence	76, 79	30, 3[illegible]
right of private defence against act of one acting under ...	98	4[illegible]
MISTAKE OF LAW		
does not prevent an act from being an offence	76, 79	30, 3[illegible]
MONTH		
meaning of the word, and how calculated	49	1[illegible]
MOVEABLE PROPERTY		
what the term means and includes	22	1
MULE		
killing, poisoning, maiming, or rendering useless, &c. ...	429	24[illegible]
MUNICIPAL COMMISSIONER		
is a "public servant,"	21	7

	Section.	Page.
MURDER		
what amounts to the crime of	299. 300	162, 16
by homi[illegible] of person whose death was not intended ...	301	168
punishment for	302	169
if committed by a life-convict	303	*ib.*
attempt to commit	*ib.*	*ib.*
punishment for, in ordinary cases	307	170
accompanied by dacoity, punishment for...	396	224
MUTINY		
abetting the commission of	131	66
where the mutiny is committed in consequence	132	*ib.*
abetting assault on superior officer	133	67
if assault is committed in consequence	134	*ib.*
abetting desertion	135	*ib.*
harbouring deserter	136	*ib.*
in a merchant vessel	137	68
abetting act of insubordination	138	*ib.*
circulating rumours, &c. with intent to excite	505	290
MUTINY ACT		
persons subject to, are not punishable for military offences under the Penal Code, when	139	68

N.

NAVIGABLE		
river, or channel, destroying or injuring	431	244
NAVIGATION		
of a vessel, rash or negligent, shewing want of regard for human life, &c.	280	155
carrying passengers in unsafe vessel	282	*ib.*
obstructing public line of	283	156
injuring by mischief	431	244
endangering by removing lights, buoys, &c.	433	245
exhibiting false lights, buoys, &c.	281	155
NAVY		
offences relating to	131, 140	66, 69
NOTARY		
public, not liable to punishment, under certain circumstances for registering insufficiently stamped deed	217	126
NUISANCE		
public, what is a...	268	151
negligent act likely to spread infection	269	*ib.*
malignant act likely to spread infection	270	*ib.*
disobeying quarantine law	271	152
adulteration of food or drink for sale	272	*ib.*
sale of noxious food or drink	273	153
adulteration of drugs	274	*ib.*
sale of adulterated drugs	275	*ib.*
sale of one drug as being another drug	276	154
defiling water of public spring or reservoir	277	*ib.*
making atmosphere injurious to health	278	*ib.*
rash driving or riding	279	155
navigation of vessel	280	*ib.*
exhibiting false light, &c.	281	*ib.*

	Section.	Page.
NUISANCE.—*Continued.*		
conveying person for hire in vessel overloaded or unsafe ...	282	155
obstructing public way or navigation	283	156
negligence with respect to poison	284	*ib.*
fire or combustible matter	285	*ib.*
explosive substance	286	157
machinery	287	*ib.*
pulling down or repairing buildings	288	158
an animal	289	*ib.*
punishment for any, not specially provided for	290	*ib.*
continuance of, after injunction to discontinue	291	*ib.*
obscene works, songs, &c.	292, 293, 294	159
O.		
OATH		
what the word means and includes	51	
refusing to take an	178	
making false statements on, to public servant	181	
OBSCENITY		
importing, printing, selling, &c. obscene books, &c.	292	
possessing obscene books, &c. for purpose of sale &c. ...	293	
singing obcene songs, &c.	294	
OBSTRUCTING		
public servant in discharge of his duty	186, 224, 225	96, 13[illegible]
the taking of property by authority of public servant ...	183	95
the sale of property	184	96
apprehension of one's self	224	131
of another	225	132
a public way	282, 431	155, 244
OCCUPIER		
of land not giving police notice of riot, &c.	154	75
of land for whose benefit a riot is committed, liability of ...	155	76
his agents—liability of, in such cases	156	*ib*
OFFENCE		
meaning of the word	40	1
what acts or omissions do not constitute an	76, 106	30, 4[illegible]
unnatural	377	20[illegible]
OMISSION		
what the word denotes	33	1
illegal, when included in the word act	32	*ib*
offence caused partly by omission, and partly by act	36	1
ORDER		
decree of Civil or Revenue Court not an, within meaning of Section 188	*Note*, 188	9
OWNER		
of land not giving police notice of ryot, &c.	154	
of land for whose benefit a riot is committed, his liability ...	155	
his agent—liability of in such cases	156	
OX		
killing, poisoning, maining, or rendering useless an	429	

P.	Section.	Page.
EACE		
breach of the, provoking to	504	290
EONS		
acting beyond jurisdiction	*Note*, 78	31
ENAL CODE		
takes effect from what date	1	1
in what places	*ib.*	*ib.*
as to what persons	2,3,4,	1, 2
what laws it does not repeal...	5	*ib.*
ERJURY		
mere failure to prove an averment in a Civil Suit does not constitute	*Note*, 191	102
PERSON		
meaning of the word	11	4
every person liable for offence committed within British India ...	2	1
every person who is liable to be tried in British India, for an offence	3	2
committed beyond its limits is subject to the Penal Code ...	139,140	68,69
MRSONATING		
a soldier	170,171	86
any public servant	205	115
another, for the purpose of a suit	229	135
a juror or assessor	472	267
LATE		
making or counterfeiting a, for purpose of forging will, or valuable security, &c.	472	*ib.*
possessing such a	473	268
making or counterfeiting a, for purpose of committing any other kind of forgery	485	272
making or possessing a, for counterfeiting trade, or property-mark		
POISON		
negligence, &c., with respect to	284	156
administering with intent to cause hurt, &c.	228	134
POSSESSION		
what amounts to	27	11
PRESIDENCY		
meaning of the word	18	5
PREVIOUS CONVICTION		
effect of in increasing punishment	75	27
PRINTING		
or engraving defamatory matter	501	288
PRIVATE DEFENCE		
the right of	96,106	41,47
culpable homicide committed in excessive exercise of right of when not murder	300	164
PROCEEDINGS		
taken under Section 318 are "judicial proceedings" though they terminate not in judgment...	*Note*, 193	105

	Section.	Page.
PROPERTY-MARK		
what is a	479	5
"using a false property-mark" what constitutes	481	5
using a false property-mark with intent, &c.	482	
counterfeiting, &c. ordinarily used by another	483	
by public servant, &c.	484	5
possessing die, plate, &c. for counterfeiting	435	
a false, possessing with intent to use it	*ib.*	
selling goods with false, knowing, &c	486	2
making false mark on goods	487	
on any receptacle for goods	*ib.*	
making use of such false mark	488	27
destroying &c. a, with intent to injure any person	489	*ib*
PROVOCATION		
when culpable homicide committed under, is not murder ...	300	164,16
causing hurt on	334	18
grievous hurt on...	335	*i*
using criminal force on	352,358	196,19
PUBLIC		
what the word includes	12	
PUBLIC JUSTICE		
offences against	191,222	102,12
PUBLIC SERVANT		
who are included in this term	21	
abetting an offence	116	50
concealing a design, &c. which it is his duty to prevent ...	119	59
voluntarily allowing prisoner of State or War to escape from custody	128	2
negligently allowing prisoner of State or War to escape ...	129	4
assault, &c., on, while suppressing riot, &c.	152	
taking a gratification, &c., improperly	161	8
abetting the taking of bribes or gratification	162, 163, 164	82,8
obtaining valuable thing for inadequate consideration, &c. ...	165	*ib*
disobeying direction of law, with a view to injure any one ...	166	8
framing incorrect document	167	8
unlawfully engaging in trade	168	8
buying or bidding for property	169	*i*
personating a	170	*i*
wearing garb, or token of	171	*i*
contempt of the lawful authority of	172,190	88,1
omitting to give notice of an offence committed ...	202	11
respecting an offence committed	203	11
framing incorrect record or writing	218	12
to save property from forfeiture	*ib.*	*i*
making order, &c., contrary to law	219	*i*
keeping person in confinement contrary to law	220	12
omitting to apprehend, &c., person accused, &c.	221	*i*
suffering accused to escape	*ib.*	*ib*
omitting to apprehend, &c., person sentenced	222	12
voluntarily suffering such person to escape	*ib.*	*i*
negligently suffering escape of person in confinement ...	223	13
insulting or interrupting a, during a judicial proceeding ...	228	13
public servant committing *culpable homicide* by exceeding his powers	300	1
causing hurt to, to deter him from doing his duty ...	332	1

	Section.	Page.
PUBLIC SERVANT—*Continued.*		
grievous hurt, with the like object	333	185
using criminal force towards, &c.	353	197
destroying, &c., landmark fixed by authority of	434	245
counterfeiting a property, mark used by a	484	272
making false marks upon goods to deceive	487	273
making use of such a false mark	488	274
PUNCHAYET		
member of a, may be a Judge, within the meaning of the Code	19	6
may be a Court of Justice, within the meaning of the Code	20	*ib.*
member of a, assisting a Court of Justice is a "public servant"	21	7
PUNISHMENT		
to what kinds of offenders are liable	53	18
limit of, for offence which is made up of several offences ...	71	26
where person guilty of one of several offences, (the judgment stating that it is doubtful of which)	72	*ib.*
in case of previous conviction	75	27
of abettor, when offence is committed through abetment ...	109	51
Q.		
QUARANTINE		
disobeying rule of	271	152
"QUEEN"		
meaning of the word	13	4
QUESTION		
refusing to answer a, put by public servant, when an offence ...	179	93
R.		
RAPE		
what amounts to	375	205
punishment for	376	206
RECEIVING		
property taken in waging war with or making depredation on ally of Government	127	64
RECEIVING STOLEN PROPERTY		
what is "stolen property"	410	233
how punishable	411	234
stolen in dacoity	412	*ib.*
habitual, or dealing in it	413	235
assisting in concealing or disposing of stolen property ...	414	*ib.*
RECORD		
public servant, framing incorrect, to secure offender ...	167	85
forging a, of Court of Justice	466	264
REGISTER		
forging a, of birth, baptism, marriage, or burial	466	*ib.*
RELEASE		
fraudulent, of any demand or claim	424	241
REPUTATION		
forging document for purpose of hurting another's	469	266
RESCUE		
of prisoner of State or War	130	65
of any person from lawful custody for offence	216	125

	Section.	Page.
RESERVOIR		
defiling or corrupting water of	277	154
for agricultural purposes, of committing mischief by destroying, &c....	430	244
RIDING		
rash or negligent, shewing want of due regard for human life, &c.	379	213
RIOT		
what constitutes the offence of	146	72
punishment for	147	*ib.*
when armed with deadly weapons	148	7[illegible]
each person in a riot, guilty of offence committed by any other	149	7[illegible]
assaulting, &c., public officer suppressing riot	152	7[illegible]
provoking a	153	7[illegible]
not giving the police notice of	154	*ib*
person on whose behalf it takes place, his liability	155	7[illegible]
liability of agent or manager	156	*ib.*
hiring persons to take part in	150	73
being hired	158	77
harbouring such persons	157	*ib.*
RIVER		
navigable, injuring	431	244
ROAD		
See *River.*		
ROBBERY		
what constitutes the offence of	390	219
punishment for simple	392	22[illegible]
attempt to commit	393	*ib.*
causing hurt while attempting to commit	394	224
with use of deadly weapons, &c.	397	225
if armed with deadly weapons	398	*ib.*
belonging to or being associated for	401	226
S.		
SAFETY		
act shewing want of regard for personal	336,337	186,18[illegible]
causing grievous hurt by such an act	338	*i*
SEA-MARK		
destroying or removing, &c.	433	24[illegible]
exhibiting false, &c.	281	155
SEAL		
making or counterfeiting a, with intent to forge a will or valuable security	472	26[illegible]
to commit any other kind of forgery	473	268
possessing a counterfeit seal with intent to forge, &c. ...	473	*ib*
to commit any other kind of forgery	473	*ib.*
SECTION		
what the word denotes	50	1[illegible]
SEDUCTION		
abducting or kidnapping a woman with a view to	366	2[illegible]
concealing persons so abducted	368	*i*

	Section.	Page.
SERVANT		
possession of, is possession of the master, when	27	11
theft by, of master's property	381	214
criminal breach of trust by	408	232
SERVICE		
breach of contract of, during voyage or journey	490	275
to attend on, &c., helpless persons	491	277
in writing to serve at a distant place to which servant is or is to be conveyed at master's expense	492	277
SERVICE (OF PROCESS)		
absconding in order to avoid service of summons or order,	172	88
preventing service of summons or order	173	*ib.*
SHOOTING		
with intent to kill	307	170
causing hurt by	324	180
grievous hurt	326	181
SIMPLE IMPRISONMENT		
meaning of	*Note,* 53	19
SLAVE		
importing, buying, or selling	370	203
doing so habitually	371	204
kidnapping a person in order to make him	367	202
SOLDIER		
person not being, who wears dress of, how punished ...	140	69
SOLEMN AFFIRMATION		
substituted by law for an oath is included in the term "oath" ...	51	17
SOVEREIGN		
of the United Kingdom denoted in the Code by the word "Queen"	13	4
SPECIAL LAW		
meaning of the term	41	16
STABBING		
causing hurt by	324	180
grievous hurt by	326	181
STATE		
offences against the	121-130	61-65
STATE PRISONER		
public servant voluntarily allowing, to escape	128	64
negligently doing so	129	*ib.*
aiding escape of, or harbouring him	130	65
STOLEN PROPERTY		
definition of term	410	233
dishonestly receiving	411-412	234
habitually dealing in	413	235
assisting in concealing or disposing of	414	*ib.*
SUICIDE		
abetment of, of child, lunatic, or person intoxicated	305	170
abetment of, in other cases	306	*ib.*

	Section.	Page.
SUICIDE—*Continued.*		
attempt to commit	309	172
attempts to commit, are of three classes	*Note,* 309	*ib.*
T.		
THEFT		
definition of the offence	378	209
punishment for, in ordinary cases	379	213
of in building, tent, or vessel	380	*ib.*
by clerk or servant	381	214
after preparation for causing death	382	*ib.*
when it amounts to *robbery*	390	219
belonging to a gang of persons associated for habitual ...	401	226
THREATS		
of injury to public servant	189	100
to *restrain* any person from applying to public servant for protection	190	*ib.*
THUG		
who comes under the denomination	310	173
punishment for being a	311	*ib.*
TORTURE		
in order to extort property	327, 329	182, 183
to extort confession	330, 331	183 184
TRADE		
public servant unlawfully engaging in	168	86
TRADE-MARK		
what is a	478	270
"using a false trade-mark," what constitutes	480	*ib.*
"using a false trade-mark," with intent to deceive	482	271
counterfeiting a, ordinarily used by another	483	*ib.*
counterfeiting mark used by public servant to denote the manufacture, &c., of property	484	272
possessing die, plate, &c., for counterfeiting	485	*ib.*
selling goods with false, knowing, &c.	486	273
making false mark on any goods	487	*ib.*
making use of such false mark	488	274
TRANSLATOR		
sworn, and translating falsely, is guilty of giving "false evidence"	191	102
TRANSPORTATION		
life for sentence of may be commuted	55	19
European or American to be sentenced to penal servitude, instead of	56	20
fractions of terms of, how to be calculated	57	*ib.*
person sentenced to, how dealt with until transported ...	58	*ib.*
may be awarded, instead of imprisonment, when	59	*ib.*
unlawful return from	226	134
U.		
UNLAWFUL ASSEMBLY		
what constitutes an	141	70
UNNATURAL OFFENCES		
their punishment	377	207

V.

	Section.	Page.
ABLE SECURITY		
hat the term denotes	30	13
ocuring the making, alteration or obstruction of, by cheating ...	420	239
rging a	467	265
aking or counterfeiting, seal or plate for purpose of forging a ...	472	267
ossessing a forged	474	268
counterfeiting, &c., a device used for authenticating a ...	475	269
destroying, &c., or secreting a	477	270
SEL		
what the word denotes	48	17
rash or negligent navigation of a	280	155
overloading a, carrying passengers for hire	282	*ib.*
theft in a	380	213
committing mischief on a decked vessel of 20 tons	437	246
if by using fire or explosive substance—	438	*ib.*
running a, ashore to commit theft	439	247
LUNTARILY		
meaning of the word	39	15

W.

	Section.	Page.
AGING WAR		
against the Queen	121	61
preparation for	122	62
concealment of design of	123	*ib.*
against Asiatic powers in alliance, &c., with the Queen ...	125	63
committing depredation on power in alliance with Government ...	126	*ib.*
receiving property taken in such waging war or depredation ...	127	64
WARE-HOUSE KEEPER		
breach of trust by	407	232
WATER		
corrupting or defiling public spring or reservoir ...	277	154
WEIGHT		
false, using a	264, 265	149
being in possession of, with knowledge and intent, &c. ...	266	150
making or selling with knowledge, &c.	267	*ib.*
WHARFINGER		
breach of trust by	407	232
WHIPPING ACT		
particular attention directed to certain clauses of		295-29
WHIPPING		
offenders are declared liable to		298
for certain offences in lieu of any other punishment... ...		*ib.*
on second conviction in addition to any other punishment ..		301
juvenile offenders may be whipped in all cases, special extension to frontier districts		305
females not to be whipped		306
nor criminals of certain class		*ib.*
not to be inflicted by officers below Subordinate Magistrates of the 1st Class, unless specially empowered		*ib.*
if in addition to imprisonment how to be inflicted		*ib.*
punishment not to be inflicted if offender is not in a fit state of health		307
nor by instalments		308
procedure if whipping cannot be inflicted		*ib.*

	Section.	Page.
WHIPPING.—*Continued.*		
sentence of whipping in lieu of other punishment to be carried out immediately		172
nevertheless such sentence is appealable		*ib.*
to render a person liable to whipping under Section 4, Act VI. of 1864, the previous conviction must be of an offence under the Penal Code		
WIFE		209
harbouring husband commits no offence	136	67,120 213
WILL		*ib.*
what the word denotes		214
forgery of	31	*ib.*
making or possessing counterfeit seal or plate with intent to commit	467	219
forged, having possession of, with knowledge and intent, &c. ...	472	226
counterfeiting a device or mark for authenticating a ...	474	2
fraudulent destruction, cancellation, &c., of	475	2
	477	2
WOMAN		*ib.*
meaning of the word	10	3
WORSHIP		*b.*
injuring or defiling place of, with intent, &c.	295	160
religious, disturbing assembly performing	296	*ib.*
WRONGFUL CONFINEMENT		
what it is	339 340	187,188
punishment for, in ordinary cases	342	189
where confinement is for three or more days	343	190
where for ten or more days	344	*ib.*
where confinement subsequent to issue of writ for liberation ...	345	*ib.*
where confinement is secret	346	*ib.*
where it is for purposes of extortion, &c.	347	191
where it is for purpose of extorting a confession, &c. ...	348	*ib.*
WRONGFUL DETENTION		
effect and meaning of	23	10
WRONGFUL GAIN		
meaning of the term	23	*ib.*
WRONGFUL LOSS		
what the term means	23	*ib.*
WRONGFUL RESTRAINT		
definition of the term	339	187
when it amounts to wrongful confinement	340	188
punishment for	341	189
WRONGFUL RETENTION		
effect and meaning of	23	10
Y.		
YEAR		
what the word means	49	17
Z.		
ZEMINDAR		
when, cannot be held responsible under Section 155 ...	*Note,* 155	76

EXPLANATION OF ABBREVIATIONS.

1.	P.	...	... PAGE.
2.	VOL.	...	... VOLUME.
3.	R. J P. J.	..	... REVENUE, JUDICIAL, & POLICE JOURNAL.
4.	R. C. C. R.	...	... REVENUE, CRIMINAL, & CIVIL REPORTER.
5.	COG.	. .	... COGNIZABLE BY THE POLICE.
6.	UNCOG.	...	... UNCOGNIZABLE DO.
7.	M.	...	... MAGISTRATE.
8.	M. D.	...	... MAGISTRATE OF DISTRICT.
9.	SUB. M.	. .	... SUBORDINATE MAGISTRATE.
10.	J.	...	... JUDGE.
11.	S. J.	. .	... SESSIONS JUDGE.
12.	CT. OF S.	. .	... COURT OF SESSIONS.
13	P. S. A.	. .	. . PRINCIPAL SUDDER AMEEN.
14.	P. C.	...	... PENAL CODE.
15.	C. C. P.	...	... CODE OF CRIMINAL PROCEDURE.
16.	P. O.	...	. . POLICE OFFICER.
17.	D. S.	...	... DISTRICT SUPERINTENDENT OF POLICE.
18.	A. S.	. .	... ASSISTANT DO. DO.
19.	H. CT.	. .	... HIGH COURT.
20.	N. A.	. .	. . NIZAMUT ADAWLUT.
21.	N. W. P.	...	... NORTH-WESTERN PROVINCES.
22.	J. C.	...	... JUDICIAL COMMISSIONER.
23.	O.	...	... OUDH.
24.	P.	...	... PUNJAB.
25.	C. P.	...	... CENTRAL PROVINCES.
26.	CIR.	...	... CIRCULAR.
27.	L. C. R.	...	... LAW COMMISSIONERS' REPORT.

THE

INDIAN PENAL CODE.

پینل کوڈ

CHAPTER I.

پہلا باب

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called THE INDIAN PENAL CODE, and shall take effect on and from the 1st day of May, 1861, throughout the whole of the Territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

1. *Vide* note on Section 21, C. C. P.

Punishment of offences committed within the said Territories.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said Territories on or after the said 1st day of May, 1861.

Punishment of offences committed beyond, but which by law may be tried within the Territories.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence (40) committed beyond the limits of the said Territories, shall be dealt with according to the provisions of this Code for any act (32) committed beyond the said Territories, in the same manner as if such act had been committed within the said Territories.

Punishment of offences committed by a servant of the Queen within a foreign allied State.

4. Every servant of the Queen (14) shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said 1st day of May, 1861, within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4, William IV, Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said Territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of Officers and Soldiers in the service of Her Majesty or of the East India

Company, or of any Act for the Government of the Indian Navy, or of any special (41) or local law (42.)

CHAPTER II.

دوسرا باب

GENERAL EXPLANATIONS.

تشریحات عام کے بیان میں

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(*a*). The Sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*). A, a Police Officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Expression once explained is used in the same sense throughout the Code.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.
ضمیر غایب اور اوسکي مشتقات

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.
واحد و جمع

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man." "Woman."
مرد و عورت

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person."
شخص

11. The word "person" includes any Company or Association or body of persons, whether incorporated or not.

"Public."
عام

12. The word "Public" includes any class of the public or any community.

"Queen."
ملکه معظمه

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen."
ملازم ملکه معظمه

14. The words "servant of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," or by or under the authority of the Government of India or any Government.

"British India."
برٹش اِنڈیا

15. The words "British India" denote the Territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

"Government of India."
گورنمنٹ ہند

16. The words "Government of India" denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

"Government."
گورنمنٹ

17. The word "Government" denotes the person or persons authorized by law to administer executive Government in any part of British India.

"Presidency."
پریزیڈنسی

18. The word "Presidency" denotes the Territories subject to the Government of a Presidency.

"Judge." جج

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*). A Collector exercising jurisdiction in a suit under Act X of 1859 is a Judge.

(*b*). A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c*). A Member of a Punchayet which has power under Regulation VII., 1816, of the Madras Code, to try and detemine suits, is a Judge.

(*d*). A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Court of Justice." کورٹ اف جسٹس

20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A Punchayet acting under Regulation VII., 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

"Public Servant." سرکاري ملازم

21. The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

A Member of a Punchayet appointed under the provisions of Act XX, 1856, is a public servant under the 5th and 10th descriptions, subordinate to this Section 21, Indian Penal Code. —*Government* v. *Akbur Ali*, page 68, Vol. V, Part II, 1865, N. A., N. W. P.

First. Every covenanted servant of the Queen;

Second. Every Commissioned Officer in the Military or Naval Forces of the Queen while serving under the Government of India, or any Government;

Third. Every Judge;

Fourth. Every Officer of a Court of Justice whose duty it is, as such Officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;

Fifth. Every juryman, assessor, or member of a Punchayet assisting a Court of Justice or public servant;

Sixth. Every arbitrator or other person to whom any cause or matter has been referred for

decision or report by any Court of Justice, or by any other competent public authority ;

Seventh. Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

Eighth. Every Officer of Government whose duty it is, as such Officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience.

The following Sections of the undermentioned Acts and Regulations are in force regarding duties and responsibilities of proprietors and occupiers of land in matters of Police responsibility of Malgoozars as public servants, Penal Code, Section 21.

Information to be given regarding thugs, dacoits, robbers, and receivers of stolen property, Regulation VI., 1810, Section 2 ; Regulation I, 1811, Section, 10 ; Regulation XX, 1817, Section 33. Omitting to give such information punishable under Sections 176, 177, Penal Code.

Information to be given regarding commission of murder, dacoity, robbery, house-breaking, and thefts, Regulation VIII., 1814, Section 2 ; Regulation III., 1812, Section 4 ; C. C. P., Section 138. Omitting to give such information punishable under Sections 202, 203, Penal Code. (By Section 138, C. C. P. not bound to give information of murder.)

Information regarding unlawful assemblies and riots, and responsibility for suppression thereof, Section 154, Penal Code.

Responsibility of all persons for whose benefit riot is committed, Section 155, Penal Code.

Prevention of breaches of the peace, Regulation II, 1797, Section 2.

Co-operation with and giving assistance to Police Officers in maintaining peace and preventing affrays, &c., Regulation XX, 1817, Section 33. Apprehension and pursuit of offenders, Regulation XX, 1817, Section 21; C. C. P., Section 82. Apprehension of proclaimed offenders, Regulation III, 1812, Section 9.

Prevention of robbery and theft, and responsibility of landholders for value of property stolen on their estates, Regulation XVII, 1795, Section 3; Regulation XIV, 1807, Section 19.

Ninth. Every Officer whose duty it is, as such Officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every Officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth. Every Officer whose duty it is, as such Officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Eleventh. Every Officer and servant of a Railway Company shall be deemed a public servant within the meaning of Secs. 161, 2, 3, 4, 5, Indian Penal Code (Act XXXI, 1867).

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1. Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2. Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

"Moveable property." مال منقوله

22. The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.

"Wrongful gain." استحصال ناجائز

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss." زیان ناجایز

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

"Dishonestly."
بدديانتي

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

"Fraudulently."
فريب

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

"Reason to believe."
باو رکرنيکي وجهه

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

"Property in possession of wife, clerk, or servant."
مال مقبوضه زوجه
يا متصدي يا نوکر

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation. A person employed temporarily, or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this Section.

"Counterfeit."
تلبيس

28. A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation. It is not essential to counterfeiting that the imitation should be exact.

"Document." دستاویز

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1. It is immaterial by what means, or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A Cheque upon a Banker is a document.

A Power of Attorney is a document.

A Map or Plan which is intended to be used, or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2. Whatever is expressed by means of letters, figures or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this Section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a Bill of Exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the Bill is to be paid to the holder. The endorsement is a document, and must be construed in the

same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

"Valuable security."
كفالت المال

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a Bill of Exchange. As the effect of this endorsement is to transfer the right to the Bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

"A Will."
وصيت نامه

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal (43) omissions.

"Act." "Omission."
ترک فعل

33. The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

Each of several persons liable for an act done by all in like manner as if done by him alone.

34. When a criminal act is done by several persons, each (35), (37) of such persons is liable for that act in the same manner as if the act were done by him alone.

When such an act is criminal by reason of its being done with a criminal knowledge or intention

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(*a*). A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(*b*). A and B are joint Jailors, and as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*). A, a Jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Several persons engaged in the commission of a criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

"Voluntarily."
بالارادہ

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

"Offence."
جرم

40. The word "offence" denotes a thing made punishable by this Code.

The "*thing*" made punishable by this Code denoted by the word "*offence*" must be an act or acts or combination of acts accompanied by and the result of a fraudulent and corrupt intention. "To constitute a crime against human laws there must be, first, a vicious will; and, second, by an unlawful act, consequent upon such vicious will." (Blackstone).

"Special Law."
قانون مختص الامر

41. A "special law" is a law applicable to a particular subject.

"Local Law."
قانون مختص المقام

42. A "local law" is a law applicable only to a particular part of British India.

43. The word "illegal" is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Illegal." "Legally bound to do."
خلاف قانون

44. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

"Injury."
ضرر

"Life." جان

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death." هلاکت

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal." حیوان

47. The word "animal" denotes any living creature other than a human being.

"Vessel." مرکب تری

48. The word "vessel" denotes any thing made for the conveyance by water of human beings, or of property.

"Year." سال

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

"Section." دفعه

50. The word "Section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

"Oath." حلف

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

"Good Faith."
نیک نیتي سے

Compare with Section 166 and note thereon.

CHAPTER III.

تیسرا باب

OF PUNISHMENTS.

سزاونکے بیان مین

In addition to the punishments described in this Section, P. C., offenders are also liable to whipping under the provisions of the said Code. Section 1, Act VI of 1864.

53. The punishments to which offenders are liable under the provisions of this Code are—

"Punishments."

First,—Death;

Secondly,—Transportation;

Thirdly,—Penal servitude;

Fourthly,—Imprisonment, which is of two descriptions, namely:

(1.) Rigorous, that is, with hard labor.

(2.) Simple.

Fifthly,— Forfeiture of property.

Sixthly,—Fine.

Fourthly,—(2). "Simple imprisonment" under the P. C. means nothing more than confinement in Jail subject to the Jail rules as to diet, &c., and prisoners undergoing such a sentence cannot be lawfully put to any work against their will.—J. C. Oudh, Book Circular $\frac{2}{6}$, 1865.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India (5) (16), or the Government of the place (3) (17) within which the offender shall have been sentenced, may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Government is here given a power of commuting sentences in certain cases without consent of the offender. It is evidently fit that Government should be empowered to commute the sentence of death for any other punishment provided in the Code. It is very desirable also that the Government should have the power of commuting perpetual transportation for perpetual imprisonment. Many circumstances, of which the executive authorities ought to be accurately informed, but which may often be unknown to the ablest Judge, may at particular times render it highly inconvenient to carry a sentence of transportation into effect. Note A. on Chapter Punishments by Law Commissioners.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India, or the Government of the place within which the offender shall have been sentenced, may, without the consent of the offender, commute the punishment for imprisonment of either description

for a term not exceeding fourteen years. See C. C. P., 54.

Vide note on Section 54.

Europeans and Americans to be sentenced to penal servitude instead of transportation.

56. Whenever any person being a European or American is convicted of an offence (40) punishable under this Code with transportation, the Court (H. Ct.) shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act XXIV of 1855.

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life (C. C. P., 22) shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how to be dealt with until transportation.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of this imprisonment. See C. C. P., 50, 51, 52.

In what cases transportation may be awarded instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court (C. C. P., 11) which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which

by this Code such offender is liable to imprisonment.

By terms of this Section, in passing sentence of transportation in cases in which imprisonment is awardable for seven years or upwards, the correct mode of proceeding is to sentence the offender to transportation, mentioning at the same time that under this Section 59 such transportation is awarded instead of imprisonment.—Circular No. 9, High Court, Calcutta, 1866.

This Section will not apply to any sentence unless that particular sentence be one of imprisonment for more than seven years. Paras. 2-3, Letter No. 667, 13th July, 1865, p. 34, Vol. V., R. J. P. J.

This Section lays down that, in every case in which an offender is punishable with imprisonment for a term of seven years or upwards, the Court, in sentencing such offender, may award transportation instead of imprisonment. The words contained in this Section allude to offenders and to offences, and an offender may be one who commits several offences. But the restriction on the first clause of the Section is to be found in the concluding clause in the words "The Court which sentences such offenders, instead of awarding imprisonment may sentence to transportation." Chap. XXVI, C. C. P., Section 382, lays down that the Court must pass sentence for each offence separately. If this procedure is observed, a Court can sentence to transportation only in a case in which an offence is punishable with a term of seven years. It may, in passing sentence for the offence, commute the imprisonment to transportation. It cannot commute the sentence after a sentence of imprisonment has been passed, and it follows, cannot commute it at all, except for offences for which the law awards seven years' imprisonment or upwards.—June 6th, 1864, Prem Chundoosoul, &c., Applicants.

Sentence may be, in certain cases of imprisonment, wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in

the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple. See C. C. P., 49.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture (C. C. P., 22) of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government (17), until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst it is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

62. Whenever any person is convicted of an offence (40) punishable with death, the Court (C. C. P., 22) may adjudge that all his property, moveable (22) and immoveable, shall be forfeited to Government (17); and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and

dependents as the Government may think fit to allow during such period.

Amount of fine.

'63. Where no sum is expressed to which a fine many extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment in default of payment of fine.

64. In every case in which an offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine (70), the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

Limit of term of imprisonment for default in payment of fine, when the offence is punishable with imprisonment as well as fine.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine. See C. C. P., 45.

Description of imprisonment for such default.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence (40.)

Term of imprisonment for default in payment of fine, when the offence is punishable with fine only.

67. If the offence be punishable with fine only, the term for which the Court (C. C. P., 11) directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale: that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty Rupees, and for any term not exceeding four months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six months in any other case.

Such imprisonment to terminate upon payment of the fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of such imprisonment upon payment of proportional part of fine.

69. If before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied, that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred Rupees, and to four months' imprisonment in default of payment. Here, if seventy-five Rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five Rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty Rupees of the fine be paid or levied

before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty Rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Fine may be levied within six years, or at any time during the term of imprisonment.

Death of offender not to discharge his property from liability.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

A fine imposed under a special or local law is not subject to the operation of this Section, unless the latter be specially extended thereto. Letter No. 1059, p. 213, Vol. V., R. J. P. J.

Imprisonment in default does not relieve from payment of fine. No. 726, p. 37, Vol. V., R. J. P. J.

N. B.—No imprisonment in default of payment of fine imposed under salt laws. No. 283, para. 2, p. 100, Vol. V., R. J. P. J.

After the death of an offender, any property which would then be liable for his debts would be liable to the payment of any portion of a fine remaining unpaid at his death. But under Section 61, C. C. P., during the life, only moveable property found within jurisdiction of M. of D. in which he has been tried and sentenced is liable. No. 968, p. 136, Vol. V, R. J. P. J.

Limit of punishment of offence which is made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided. See C. C. P., 46, 47, 48.

(*a*). A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*). But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to A, and to another for the blow given to Y.

Punishment of a person found guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of those offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

See C. C. P., 242, as to indictment where nature of crime is doubtful; and 382, Clause 5, for alternative finding and sentence.

Solitary confinement. C. C. P., 22.

73. Whenever any person is convicted of an offence for which under this Code the Court (16 and 22, C. C. P.) has power to sentence (382, C. C. P.) him rigorous imprisonment, the Court may, (16 and 22, C. C. P.)

by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

A time not exceeding one month, if the term of imprisonment shall not exceed six months.

A time not exceeding two months, if the term of imprisonment shall exceed six months and be less than a year.

A time not exceeding three months, if the term of imprisonment shall exceed one year.

Limit of solitary confinement.

74. In executing a sentence (382, C. C. P.) of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Punishment of persons convicted, after previous conviction, of an offence punishable with three years' imprisonment.

75. Whoever, having been convicted of an offence (40) punishable under Chapter XII (offences relating to coin and Government stamps), or Chapter XVII (offences against property), of this Code with imprisonment of either description for a term of three years or upwards, shall be

guilty of any offence punishable under either of those Chapters with the imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to double the amount of punishment to which he would otherwise have been liable for the same. Provided, that he shall not in any case be liable to imprisonment for a term exceeding ten years.

A Magistrate is not bound to commit a person accused under Sections 380 and 457, Penal Code, because he has been previously convicted under Chapter XVII, Penal Code. He can, if he thinks fit, pass sentence within his competence; because the Schedule attached to C. C. P. does not provide that persons punishable under Section 75 of Penal Code are to be tried by any other Court than that which would have had jurisdiction over the offence if there had not been any previous conviction. Letter No. 880 of 1863, p. 109, Vol. II, R. J. P. J.

The pith of this Section appears to lie in the words "to double the amount of punishment to which he would *otherwise* have been liable for the same."

A commits theft in a house in January, 1865, and taking all circumstances into consideration, you consider him worthy of six months' imprisonment. In January, 1867, A again commits theft; this time, say, under Section 379, Penal Code. You can, under provisions of this Section, give him a year, though, had it been his first offence, you might have only given him six months. It would appear that this Section was framed with a view to giving a Sessions Judge power to get rid of a confirmed bad character by giving him a good long imprisonment or transportation for life.

Under Section 21, C. C. P., the Criminal Courts of the several grades, according to the powers vested in them respectively, have jurisdiction in respect of the offences punishable under the Indian Penal Code.

Act VI of 1864 is part and parcel of the Indian Penal Code. Consequently, the officers mentioned in Section 8 have power to pass sentences of whipping under Section 3, *in addition* to the punishment which they are also authorized to inflict under Section 22 of the C. C. P. No. 294, dated 15th April, 1868, J. C., O.

An offender after having been punished with imprisonment for a crime under Chapter XVII, again *after his release from prison* commits a similar description of crime, or a crime punishable under the same Chapter, is liable under this Section to enhanced punishment; but when no imprisonment under it has yet been undergone, and no time has been given for reformation, it cannot be said that a prisoner has had any opportunity of showing what the effect of the first sentence would have been upon him. 14th April, 1866, p. 60, Vol. I, R. C. C. R.

A man convicted of an offence punishable under Chapters VII and XVII of this Code prior to 1st January, 1862, would not, on a second conviction subsequent to that date, be liable to any enhanced punishment under this Section (75), the provisions of this Section not being applicable to convictions made prior to the Penal Code coming into operation. Vol. II, p. 109, R. J. P. J.

N. B.—It is not necessary that a person should actually have undergone imprisonment for three years; as long as the *offence* of which he has been convicted *is punishable* with imprisonment for a term of three years, he comes under the provisions of this Section 75.

CHAPTER IV.

باب چہارم

GENERAL EXCEPTIONS.

مستثنیات عامہ کی بیان میں

This Chapter has been passed to obviate the necessity of repeating in every penal clause a considerable number of limitations. With the exception of one or two limitations, which limitations are, as a rule, appended to the Sections which they are intended to modify, there are other exceptions in favour of infants, lunatics, idiots, persons under the influence of delirium; exceptions in favour of acts done by the direction of the law; of acts done in the exercise of the right of self-defence; of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page, they have, therefore, been placed in a separate Chapter, and it has been provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in this Chapter. Note B., Indian Law Commissioners, pp. 79-80.

Act done by a person bound, or by a mistake of fact believing himself bound, by law.

76. Nothing is an offence (40) which is done by a person who is, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith (52) believes himself to be bound by law to do it.

Where a person who, as attempted to be arrested by a chowkeydar as a thief, made a desperate resistance, it was held that the chowkeydar was justified in using such violence as was necessary to arrest him.

Even if the chowkeydar was wrong in supposing him to be a thief, the mistake was one of *fact*, and not a mistake of *law*, and

the chowkeydar would be entitled to the benefit of this Section 76 and Section 79 of this Code.—*In re* Protaub, chowkeydar, 16th January, 1865, Vol. IV, p. 165, R. J. P. J.

Illustrations.

(*a.*) A, a soldier, fires on a mob by the order of his superior Officer, in conformity with the commands of the law. A has committed no offence.

(*b.*) A, an Officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Act of Judge when acting judicially.

77. Nothing is an offence (40) which is done by a Judge (19) when acting judicially in the exercise of any power which is, or which in good faith (52) he believes to be, given to him by law.

De fide et officio Judicis non recipitus quæstio sed de scientia sive sit error juris sive facti. The *bona fides* and honesty of purpose of a Judge cannot be questioned, but his decision may be impugned for error either of law or fact. Legal Maxim.

Act done pursuant to the judgment or order of a Court of Justice.

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, (20) if done whilst such judgment (201, C. C. P.) or order remains in force, is an offence, notwithstanding the Court (11, C. C. P.) may have had no jurisdiction to pass such judgment or order, provided the person doing the act (33) in good faith (52) believes that the Court had such jurisdiction.

Peons acting beyond jurisdiction are not protected by this

Section. The protection is *eundo, morando, et redeundo.* P. 43, Vol. V., R. J. P. J.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence (40) which is done by any person (11) who is justified by law, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith (52) believes himself to be justified by law in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers, in the fact seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Accident in the doing of a lawful act.

80. Nothing is an offence (40) which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, with proper care and caution.

Illustration.

A is at work with a hatchet: the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable, and not an offence.

Act likely to cause harm, but done without a criminal intent, and to prevent other harm.

81. Nothing is an offence (40) merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith (52), for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case, whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a.*) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel; and that by changing his course he must incur the risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith, for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him incurring the risk of running down the boat C.

(*b.*) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Act of a child under 7 years of age.

82. Nothing is an offence (40) which is done by a child under seven years of age.

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding.

83. Nothing is an offence (40) which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a person of unsound mind.

84. Nothing is an offence (40) which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence (40) which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. Provided, that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent committed by one who is intoxicated.

86. In cases where an act (33) done is not an offence (40) unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

87. Nothing which is not intended to cause death (46) or grievous hurt (320), and which is not known by the doer to be likely to cause death or grievous hurt, is an offence (40) by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or

implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death, done by consent in good faith for the benefit of a person.

88. Nothing which is not intended to cause death (46) is an offence (40) by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith (52), and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustrations.

(*a.*) A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

(*b.*) Where death supervenes on emasculation, the operators are guilty of culpable homicide, notwithstanding the voluntary consent of the person operated on, and the fact of his being an adult. This Section 88, coupled with explanation appended to Section 92, does not justify the infliction of such an injury, (although it was not intended to cause death,) for the mere pecuniary benefit of the person voluntarily submitting to it. Queen *v.* Baboohin Hijrah, &c., 15th January, 1866. R. C. C. R., Vol. I, p. 12.

Act done in good faith for the benefit of a child or person of unsound mind, by or by consent of guardian.

89. Nothing which is done in good faith (52) for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence (40) by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided:—

Provisoes.

First. That this exception shall not extend to the intentional causing of death (46), or to the attempting to cause death;

Secondly. That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death(46), for any purpose other than the preventing of death or grievous hurt (327), or the curing of any grievous disease or infirmity;

Thirdly. That this exception shall not extend to the voluntary causing of grievous hurt (322), or to the attempting to cause grievous hurt (320), unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly. That this exception shall not extend to the abetment (107) of any offence (40), to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception.

90. A consent is not such a consent as is intended by any Section of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act (33) knows, or has reason to believe (26), that the consent was given in consequence of such fear or misconception ; or

Consent of a child or person of unsound mind.

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent ; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Acts which are offences independently of harm caused to the person consenting, are not within the exceptions in Sections 87, 88, 89.

91. The exceptions in Sections 87, 88, and 89 do not extend to acts (33) which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the

purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for the benefit of a person without consent.

92. Nothing is an offence (40) by reason of any harm which it may cause to a person for whose benefit it is done in good faith (52), even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. Provided—

Provisoes.

First. That this exception shall not extend to the intentional causing of death, (46) or the attempting to cause death;

Secondly. That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly. That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly. That this exception shall not extend

to the abetment of any offence, to the committing of which offence it would not extend.

Vide note on Section 88, P. C.

Illustrations.

(*a.*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b.*) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c.*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal, unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d.*) A is in a house which is on fire with Z, a child. People below hold out a blanket. A drops the child from the housetop, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation. Mere pecuniary benefit is not benefit within the meaning of Sections 88, 89, and 92.

Communication made in good faith.

93. No communication made in good faith (52) is an offence (40) by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder (300) and offences against the State (Chapter VI) punishable with death (46), nothing is an offence (40) which is done by a person who is compelled to do it by threats, which at the time of doing it reasonably cause the apprehension that instant death to that person will otherwise be the consequence. Provided the person doing the act (33) did not of his own accord, or from a reasonable apprehension of harm to himself, short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1. A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits (400), knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence (40) by law.

Explanation 2. A person seized by a gang of dacoits (400), and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

95. Nothing is an offence (40) by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Act causing slight harm.

Of the Right of Private Defence.

حفاظت خود اختياري

96. Nothing is an offence (40) which is done in the exercise of the right of private defence.

Nothing done in private defence is an offence.

Necessitas inducit privilegium quoad jura privata. With respect to private right, necessity privileges a person acting under its influence. Legal Maxims, p. 10.

97. Every person has a right, subject to the restrictions contained in Section 99, to defend—

Right of private defence of the body and of property.

First. His own body, and the body of any other person against any offence affecting the human body.

Secondly. The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

98. When an act (33) which would otherwise be a certain offence (40), is not that offence, by reason of the youth, the want of maturity of understand-

Right of private defence against the act of a person of unsound mind, &c.

ing, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a.*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b.*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. *First.*—There is no right of private defence against an act (33) which does not reasonably cause the apprehension of death (46) or of grievous hurt (320), if done, or attempted to be done, by a public servant (21) acting in good faith (52) under color of his office, though that act may not be strictly justifiable by law.

Second.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under color of his office, though that direction may not be strictly justifiable by law.

Third.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.

Fourth.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1. A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2. A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction; or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

When the right of private defence of the body extends to causing death.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding Section, to the voluntary causing of death or of any other harm to the assailant, if the offence (40) which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

First.—Such an assault (351) as may reason-

ably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Secondly.—Such an assault (351) as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Thirdly.—An assault (351) with the intention of committing rape (375);

Fourthly.—An assault (351) with the intention of gratifying unnatural lust (359);

Fifthly.—An assault (351) with the intention of kidnapping or abducting (362);

Sixthly.—An assault (351) with the intention of wrongfully confining (340) a person (11) under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death.

101. If the offence (40) be not of any of the descriptions enumerated in the last preceding Section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death (46).

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not

have been committed; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends, under the restriction mentioned in Section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence (40) the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely—

First.—Robbery (390).

Secondly.—House-breaking by night (446).

Thirdly.—Mischief by fire committed on any building, tent, or vessel, which building, tent, (436) or vessel is used as a human dwelling, or as a place for the custody of property.

Fourthly.—Theft (378), mischief (425), or house-trespass (442), under such circumstances as may reasonably cause apprehension that death (46) or grievous hurt (320) will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence (40) the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft (378), mischief (425), or criminal trespass (441), not of any of the descriptions enumerated in the last preceding Section, that right does not extend

to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. *First.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Secondly.—The right of private defence of property against theft (378) continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Thirdly.—The right of private defence of property against robbery (390) continues as long as the offender causes, or attempts to cause, to any person death (46), or hurt (319), or wrongful restraint (339), or as long as the fear of instant death, or of instant hurt, or of instant personal restraint continues.

Fourthly.—The right of private defence of property against criminal trespass (441) or mischief (425) continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifthly.—The right of private defence of property against house-breaking by night (446) continues as long as the house-trespass (442) which has been begun by such house-breaking continues.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

106. If, in the exercise of the right of private defence against an assault (351) which reasonably causes the apprehension of death (46), the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob, who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so firing, he harms any of the children.

CHAPTER V.

باب پانچواں

OF ABETMENT.

اعانت عامہ کے بیان میں

It may be as well to mention here in this place, for the information of those concerned, that, by Article 10, Schedule B, Act XXVI of 1867, all petitions and applications regarding offences uncognizable by the Police, as specified in Column 3 of the Schedule annexed to C. C. P., had to be presented to the Criminal Courts on one Rupee Stamp paper. But by Notification, Financial Department, No. 1120, dated 20th February, 1868, under provisions of Section 2, Act XVIII of 1865, the Governor General in Council sanctioned the exemption from Stamp duty of petitions and applications mentioned in Article 10, Schedule B, Act XXVI of 1867, when such were presented to any Criminal Court by Government Officers in their public capacity.

Petitions and applications regarding crimes cognizable by the Police, with two exceptions, *viz.*, wrongful restraint (339) and wrongful confinement (340), were exempted from Stamp duty. With regard to petitions and applications presented to Criminal Courts by Government Officers in their public capacity, these two Sections 339 and 340, P. C., come under the provisions of Financial Department Notification No. 1120, dated February 20th, 1868.

Abetment of a thing

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person (11) or persons in any conspiracy for the doing of that thing, if an act (33) or illegal (43) omission (33) takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act (33) or illegal omission (33), the doing of that thing.

Concealment of murder does not necessarily amount to abetment, but may form evidence in support of the general charge. It is true that Section 107 lays it down that illegal omission which aids the doing of a thing is abetment. But this refers to omission at the time of the doing of the act. Mere concealment of the murder afterwards is not tantamount to an illegal omission and to abetment. (P. 106, Vol. V, R. J. P. J.) There is no law binding a person to give information of a murder. —Letter No. 777, August 7th, 1865, p. 100, Vol. V, R J. P. J.

Explanation 1. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure,

a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2. Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

معین

108. A person abets (107) an offence (40) who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. The abetment of the illegal omission (33) of an act (33) may amount to an offence (40), although the abettor may not himself be bound to do that act.

Explanation 2. To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustration.

(*a*.) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b.*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B. to commit murder.

Explanation 3. It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b.*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c.*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d.*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty

of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4. The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5. It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this Section, and is liable to the punishment for murder.

Ct by which offence abetted is triable.

Cog if for offence abetted Cog According as offence abetted is bailable or not.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

109. Whoever abets (107) any offence (40) shall, if the act (33) abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be

punished with the punishment provided for the offence.

The offence of abetment under this Section can only be committed in regard to offences punishable by this Code.—Queen *v.* Kulsimoodeen, H. Ct., Calcutta, 6th April, 1867.

E. G.—A illegally abets the illicit sale of liquor to a soldier. Act XXI of 1856 contains no provision for punishment of abetment. The offence not being punishable under Penal Code, but punishable under a distinct and special law, cannot be brought under the provisions of this Section 109.

Explanation. An act (23) or offence (40) is said to be committed in consequence of abetment (107), when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in Section 161.

(*b.*) A instigates B to give false evidence B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c.*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z: B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Cog. if for offence abetted Cog According as offence abetted is bailable or not.

Ct by which offence abetted is triable.

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

110. Whoever abets (107) the commission of an offence (40) shall, if the person (11) abetted does the act (33) with a different intention or knowledge from that of the abettor, be

punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

Ct. by which offence abetted is triable.

Cog. if for offence abetted Cog. According as offence abetted is bailable or not.

Liability of abettor when one act is abetted and a different act is done.

111. When an act (33) is abetted (107) and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.

Proviso.

Illustrations.

(*a.*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was, under the circumstances, a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(*b.*) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c.*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that mur-

der was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Cog. if for offence abetted Cog. According as offence abetted is bailable or not.

Ct by which offence abetted is triable.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act (33) for which the abettor is liable under the last preceding Section is committed in addition to the act abetted, and constitutes a distinct offence (40), the abettor is liable to punishment for each of the offences.

Illustrations.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Do. Do.

Do. Do.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act (33) is abetted (107) with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in

consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Ct. by which offence abetted is triable.

Abettor present when offence is committed.

Cog. if for offence abetted Cog. According as offence abetted is bailable or not.

114. Whenever any person (11) who, if absent, would be liable to be punished as an abettor, is present when the act (33) or offence (40) for which he would be punishable in consequence of the abetment (107) is committed, he shall be deemed to have committed such act or offence.

A charge of contempt of Court for not responding to a civil summons under 168, C. C. P., and this Section 114, P. C., is not sustainable, unless service of notice under Sections 155, 156, Act VIII, 1859, be legally proved.—Queen *v.* Hurry Nath, H. Ct., Calcutta, 27th April, 1867.

Where grievous hurt was caused, and the evidence went to show that the attack was unpremeditated, the conviction for abetment, under Section 114, of certain prisoners who stood by while the assault was being committed by others is not sustainable.

Illustration.

A writes to B telling him that C is likely to pass along a certain road with treasure, and instigates B to lie in wait for and rob C. B, on such instigation, lies in wait for and robs C. A is guilty under Section 114, P. C.

Do. Do.

Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment. If an act which causes harm be done in consequence of the abetment.

Do. Do. Not bailable.

115. Whoever abets (107) the commission of an offence punishable with death (46) or transportation for life, shall, if that offence be not committed in consequence of the abetment (107), and no express provision is made by this Code for the punishment of such abetment, be punished with, impri-

sonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt (319) to any person (11), is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Cog. if offence abetted Cog. Not bailable.

Ct. by which offence abetted is triable.

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

116. Whoever abets (107) an offence (40) punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant (21), whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this Section.

(*b*.) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this Section, and is punishable accordingly.

(*c*.) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*.) B abets the commission of a robbery by A, a police officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Ct by which offence abetted is triable.

Cog. if offence abetted Cog. Not bailable.

Abetting the commission of an offence by the public, or by more than 10 persons.

117. Whoever abets (107) the commission of an offence (40) by the public (12) generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

An abetment by ten persons, which results in twelve coolies breaking their several contracts, is not abetment within Section 117, P. C., as each breach of contract constitutes a separate offence, under Section 492, P. C., by each coolie.

Illustrations.

A, B, and C abet 33 coolies to break their several contracts; is an abetment within Section 117, P. C.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this Section.

Cog. if offence abetted Cog. Not bailable.

Ct by which offence abetted is triable.

Concealing a design to commit an offence punishable with death or transportation for life.

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death (46) or transportation for life, voluntarily (39) conceals, by any act (33) or illegal omission (33), the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence be not committed, with imprisonment of either description (53) for a term which may extend to three years; and in either case shall also be liable to fine.

If the offence be committed.

If the offence be not committed.

To render a person punishable under this Section and Section 120, there must be an act or *illegal* omission, not merely a simple omission. P. 83, Mr. Campbell's printed Circular, J. C., O.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this Section.

Ct by which offence abetted is triable.

Cog. if offence abetted Cog. According as offence abetted is bailable or not.

119. Whoever, being a public servant (21), intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence (40), the commission of which it is his duty as such public servant to prevent, voluntarily (39) conceals, by any act (33) or illegal omission (33), the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description (53) provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years; or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

A public servant concealing a design to commit an offence which it is his duty to prevent.

If the offence be committed.

If the offence be punishable with death, &c.

If the offence be not committed.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this Section.

Cog. if offence abetted Cog. According as offence abetted is bailable or not.

Ct. by which offence abetted is triable.

Concealing a design to commit an offence punishable with imprisonment.

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence (40) punishable with imprisonment, voluntarily (39) conceals, by any act (33) or illegal omission (33), the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If the offence be committed.

If not committed.

CHAPTER VI.

چتها باب

OF OFFENCES AGAINST THE STATE.

جرائم خلاف ورزي باسرکار

It being exceedingly doubtful whether the Statute Law of Treason could be binding on Natives of India in the Mofussil, it was desirable that the Imperial Legislature *should* pass a law of high treason for the East India Company's territories. There was no particular occasion for a law to be passed against offences directed immediately against the Sovereign person, but it was highly requisite that persons residing in the territories of the East India Company, who might at any time become parties to the levying of war against the British Crown, should be made

subject to the jurisdiction of the Courts established by Royal Charter, and to legal punishment. For these reasons, this Chapter was framed, suspending, as it were, the English Law of Treason.

Section 5, Act VI of 1864, provides for whipping of juvenile (see 83, P. C.) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Cir. No. 2, dated 8th April, 1864.) No *female*, nor any person sentenced to *death* or *transportation*, or *penal servitude* or imprisonment for more than 5 years, shall be whipped.—Section 7, Act VI of 1864.

Ct. of S. Uncog. Not bailable. Warrant.

Waging, or attempting to wage war, or abetting the waging of war against the Queen.

121. Whoever wages war against the Queen (13), or attempts to wage such war, or abets (107) the waging of such war, shall be punished with death (46) or transportation for life, and shall forfeit all his property.

It will be seen from this Section that the attempt at, or abetment of, hostilities against the Government has been made a separate offence, and not left to the ordinary law of abetments; and this, the Law Commissioners observe, is for two reasons: "1*st*.—Because war may be waged against Government by persons in whom it is no offence to wage such war; 2*nd*, because though, in general, a person who has been a party to a criminal design which has not been carried into effect, ought not to be so severely punished as if that design had been carried into effect, yet an exception to this rule must be made with respect to high offences against the State; for State crimes, and especially the most heinous and formidable State crimes, have this peculiarity, that if they are successfully committed, the criminal is almost always secure from punishment * * *. As the penal law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first begin-

ning of rebellion, and against treasonable designs which have been carried no further than plots and preparation."

Illustrations.

(*a.*) A joins an insurrection against the Queen. A has committed the offence defined in this Section.

(*b.*) A in India abets the insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

Uncog Not bailable Warrant.

Ct of S.

Collecting arms, &c., with the intention of waging war against the Queen.

122. Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen (13), shall be punished with transportation for life, or imprisonment of either description (53) for a term not exceeding ten years, and shall forfeit all his property.

Do. Do. Do. Do. Warrant.

Do. Do.

Concealing with intent to facilitate it, a design to wage war.

*123. Whoever by any act (33), or by any illegal omission (33), conceals the existence of a design to wage war against the Queen (13), intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Do. Do. Do. Do. Warrant.

Do. Do.

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

*124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of

any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults (351), or wrongfully restrains (339), or attempts wrongfully to restrain (511) (339), or overawes by means of criminal force (350) or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Ct. of S. Uncog. Not bailable Warrant.

Waging war against any Asiatic power in alliance with the Queen.

*125. Whoever wages war against the Government (17) of any Asiatic power in alliance or at peace with the Queen, (13), or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added; or with imprisonment of either description (53) for a term which may extend to seven years, to which fine may be added; or with fine.

Do. Do. Do. Do. Do. Do. Warrant.

Committing depredation on the territories of any power at peace with the Queen.

*126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen (13), shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

(a) Uncog. Not bailable. Warrant. Ct. of S.

Receiving property taken by war or depredation mentioned in Sections 125 and 126.

*127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in Sections 125 and 126, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Do. Do. Warrant. Do. Do.

Public servant voluntarily allowing Prisoner of State or War in his custody to escape.

*128. Whoever, being a public servant (21), and having the custody of any State Prisoner or Prisoner of War, voluntarily (39) allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

See Regulation III., 1818, Bengal.
„ Regulation II., 1819, Madras.
„ Regulation XXV., 1827, Bombay.
„ Acts XXXIV of 1850, and III., 1858, regarding detention of persons as State Prisoners.

Do. Do. Warrant. Do. Do.

Public servant negligently suffering Prisoner of State or War in his custody to escape.

*129. Whoever, being a public servant (21), and having the custody of any State Prisoner or Prisoner of War, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

(a) By new Bill, Uncog. Bailable. Ct. of S, or M. of D.

Ct of S. *130. Whoever knowingly aids or assists any State Prisoner or Prisoner of War in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Uncog Not bailable Warrant.

Aiding escape or rescuing, or harbouring such prisoner.

Explanation. A State Prisoner or Prisoner of War who is permitted to be at large on his parole within certain limits in British India (15), is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

ساتوان باب

OF OFFENCES RELATING TO THE ARMY AND NAVY.

جرايم متعلقه افواج بحري و بري

The provisions of this Chapter relate to the punishment of persons who, not being Military, abet Military crimes The laws to which the Army and Navy are specially subject are excepted (See Sections 5 and 139, P. C) It is because the general law regarding abetting of offences will not reach a person who encourages those who are subject to Military law to commit breaches of discipline, that this Chapter has been

framed. But it must be borne in mind that an offence (40) committed by a soldier or sailor, if not coming under the exception of Sections 5 and 139, P. C., is punishable under this Act, and whoever abets such soldier or sailor in such offence is punishable under general provisions of Penal Code.

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in lieu of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864.) No *female*, nor any person sentenced to *death* or *transportation*, or *penal servitude* or imprisonment for *more than* 5 *years* shall be whipped. Section 7, Act VI of 1864.

Cog. Not bailable. Warrant. Ct. of S.

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

* 131. Whoever abets (107) the committing of mutiny by an officer, soldier, or sailor in the Army or Navy of the Queen (13), or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets (107) the committing of mutiny by an officer, soldier, or sailor in the Army or Navy of the Queen (13), shall, if mutiny be committed in consequence of that abetment, be punished with death (46) or with transportation for life, or imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

(a) Ct. of S. *133. Whoever abets (107) an assault (351) by an officer, soldier or sailor in the Army or Navy of the Queen (13), on any superior officer being in the execution of his office, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine.

Abetment of an assault by a soldier or sailor on his superior officer, when in the execution of his office.

Cog. Not bailable. Warrant.

Do. Do. *134. Whoever abets (107) an assault (351) by an officer, soldier, or sailor in the Army or Navy of the Queen (13), on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

Do. Do. Warrant.

M. of D. *135. Whoever abets the desertion of any officer, soldier, or sailor in the Army or Navy of the Queen (13) shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Abetment of the desertion of a soldier or sailor.

Cog. Bailable. Warrant.

Do. *136. Whoever, except as hereinafter excepted, knowing or having reason to believe (26) that an officer, soldier, or sailor in the Army or Navy of the Queen (13) has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Harbouring a deserter.

Do. Do. Warrant.

(a) By new Bill, Ct. of S. or M. of D.

Exception. This provision does not extend to the case in which the harbour is given by a wife to her husband.

If this Section be referred to in the charge made out under Chapter XIII., C. C. P., as the Section under which the offender charged is punishable, the existence of the exception here mentioned should be *distinctly* denied in the body of the charge. —*Vide* Section 237, C. C. P., and Circular dated 11th March, 1863, H. C., Calcutta.

Uncog. Bailable. Summons.

Deserter concealed on board a merchant vessel through negligence of master.

*137. The master or person in charge of a merchant vessel on board of which any deserter from the Army or Navy of the Queen (13) is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding Five Hundred Rupees if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Cog. Bailable. Warrant.

Abetment of act of insubordination by a soldier or sailor.

*138. Whoever abets (107) what he knows to be an act (33) of insubordination by an officer, soldier, or sailor in the Army or Navy of the Queen (13), shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine, or with both.

Person subject to Articles of War not punishable under this Code.

139. No person (11) subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment

under this Code for any of the offences defined in this Chapter.

Any Mag. Cog. Bailable. Summons.

Wearing the dress of a soldier.

* 140. Whoever, not being a soldier in the Military or Naval service of the Queen, (13) wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Five Hundred Rupees, or with both.

CHAPTER VIII.

اٹھوان باب

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

مجمع خلاف قانون

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked * in this chapter. Juveniles may be punished with whipping only in *lieu of* any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death* or *transportation*, or *penal servitude* or imprisonment for *more than five years* shall be whipped. Section 7, Act VI of 1864.

Unlawful assembly.
مجمع خلاف قانون

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First. To overawe by criminal force (350), or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant (21) in the exercise of the lawful power of such public servant; or

Secondly. To resist the execution of any law, or of any legal process; or

Thirdly. To commit any mischief (425) or criminal trespass (441), or other offence (40); or

Fourthly. By means of criminal force (350), or show of criminal force to any person (11), to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifthly. By means of criminal force (350), or show of criminal force, to compel any person (11) to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation. An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly (141.)

Information regarding unlawful assemblies and riots, and responsibility for prevention and suppression thereof, Section 154, P. C. Prevention of breaches of the peace, Regulation II., 1797, Section 2. Co-operation with and giving assistance to Police Officers in maintaining peace and in preventing affrays, &c., Regulation XX., 1817, Section 33. Apprehension and pursuit of offenders, Regulation XX., 1817, Section 21, and C. C. P., Section 82. Intentionally omitting to apprehend, or suffering escape, punishable under Section 221, P. C. Apprehension of proclaimed offenders, Regulation III., 1812, Section 9; Regulation XX., 1817, Section 33.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined, when the thing made punishable is punishable by such law with imprisonment for a term of six months or upwards, with or without fine. Act IV of 1867.

Being a member of an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly (141), intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Any Mag. Cog. Bailable. Summons.

Punishment.

*143. Whoever is a member of an unlawful assembly (141) shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine, or with both.

Do. Do. Do. Do. Warrant.

Joining an unlawful assembly armed with any deadly weapon.

*144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely cause to death (46), is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term

which may extend to two years, or with fine, or with both.

Cog. Bailable. Warrant.

*145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly (141) has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.

Any Mag.

146. Whenever force (349) or violence is used by an unlawful assembly (141), or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting (146.)

Force used by one member in prosecution of the common object.

Information regarding unlawful assemblies and riots, and responsibility for prevention and suppression thereof, Section 154, P. C. Responsibility of all persons for whose benefit a riot is committed, Section 155, P. C. Prevention of breaches of the peace, Regulation II., 1797, Section 2. Co-operation with and giving assistance to Police Officers in maintaining peace, and in preventing affrays, &c, Regulation XX, 1817, Section 21. C. C. P., Section 82. Intentionally omitting to apprehend, or suffering escape, punishable under Section 221, P. C. Apprehension of proclaimed offenders, Regulation III, 1812, Section 9; Regulation XX, 1817, Section 33.

Do. Do. Warrant.

*147. Whoever is guilty of rioting (146) shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

Do. Do.

Ct. of S. or M. of D.

Cog. Bailable. Warrant.

Rioting, armed with a deadly weapon.

*148. Whoever is guilty of rioting, being armed with a deadly weapon (148), or with anything which, used as a weapon of offence (40), is likely to cause death (46), shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

148, 149, 234. Rioting armed with deadly weapons is a distinct offence from stabbing a person on whose premises the riot takes place, and each is separately punishable.—Queen *v.* Kalachund, &c., H. Ct., Calcutta, 29th April, 1867.

Ct by which offence is triable.

According as arrest may be made without warrant for offence or not. According as offence is bailable or not.

According as warrant or summons may issue for the offence.

Every member of an unlawful assembly to be held guilty of any offence committed in prosecution of common object.

*149. If an offence (40) is committed by any member of an unlawful assembly (141) in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly is guilty of that offence.

A charge under this Section should state the common objects of the unlawful assembly in prosecution of which an offence was committed by one member, so as to render *all* liable to such offence.—Letter No. 1150, 15th October, 1865, R. C. C. R., p. 3, Vol. I.

By Ct. by which offence is punishable.

Cog. According as offence is bailable or not.

According to the offence committed by the person hired, engaged, or employed.

Hiring, or conniving at hiring of persons to join an unlawful assembly.

*150. Whoever hires, or engages, or employs, or promotes, or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly (141), shall be punish-

able as a member of such unlawful assembly, and for any offence (40) which may be committed by any such person (11) as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Cog. Bailable. Summons. Any Mag.

Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.

*15. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description (53)for a term which may extend to six months, or with fine, or with both.

Explanation. If the assembly is an unlawful assembly within the meaning of Section 141, the offender will be punishable under Section 145.

Do. Do. Warrant. Ct. of S. or M. of D.

Assaulting or obstructing public servant when suppressing riot, &c.

*152. Whoever assaults (351) or threatens to assault, or obstructs or attempts to obstruct, any public servant (21) in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly (141), or to suppress a riot (146) or affray (149), or uses, or threatens, or attempts to use criminal force (350) (511) to such public servant, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

Any Mag. *153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting (146) to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Wantonly giving provocation, with intent to cause riot. If rioting be committed.

If not committed.

Cog. Bailable. Warrant.

Summons.

M. of D., or Sub M., 1st Class. *154. Whenever any unlawful assembly (141) or riot (146) takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding One Thousand Rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe (26) it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest Police Station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Owner or occupier of land on which an unlawful assembly is held.

Uncog. Bailable. Summons.

Uncog. Bailable. Summons.

M of D or Sub. M., 1st Class.

Liability of person for whose benefit a riot is committed.

*155. Whenever a riot (146) is committed for the benefit or on behalf of any person (11) who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly (141) by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

A zemindar cannot be held responsible under Section 155, P. C, when the riot is sudden and unpremeditated, and he resides at a distance.—P. 44, Vol. V., R. J. P. J.

Do. Do. Summons.

Do. Do.

Liability of agent of owner or occupier for whose benefit a riot is committed.

*156. Whenever a riot (146) is committed for the benefit or on behalf of any person (11) who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in

his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

M. of D., or Sub. M., 1st Class. *157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly (141), shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine, or with both. Cog. Bailable. Summons.

Harbouring persons hired for an unlawful assembly.

Do. Do. *158. Whoever is engaged, or hired, or offers, or attempts to be hired or engaged, to do or assist in doing any of the acts specified in Section 141, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine, or with both; and whoever, being so engaged or hired as aforesaid, goes armed, or engages, or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death (46), shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Do. Do. Summons.

Being hired to take part in an unlawful assembly or riot.

Or to go armed.

*159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray." Warrant.

Affray.

Vide note on Section 411, regarding prevention of affrays.

Uncog. Bailable. Summons.

Any Mag.

Punishment for the commission of an affray.

*160. Whoever commits any affray (159) shall be punished with imprisonment of either description (53) for a term which may extend to one month, or with fine which may extend to One Hundred Rupees, or with both.

By English law, affrays are misdemeanours, and the definition of an affray is much the same as that given here in Section 159, P. C. If the fighting be in private, it is no affray, but an assault. All persons countenancing an affray are guilty of a misdemeanour.

CHAPTER IX.

نوان باب

OF OFFENCES BY, OR RELATING TO, PUBLIC SERVANTS.

جرمون سرکاري ملازمون کے بیان مین

This Chapter was framed so as to punish offences committed by public servants, also offences relating to public servants, though not committed by them. For definition of public servant, see Section 21, P. C. The offences common between public servants and the mass of the community are left to the general provisions of the Code, because the Law Commissioners were of opinion " it was desirable that the property of the State should, in general, be protected by exactly the same laws which were considered sufficient for the protection of the property of the subject." Therefore if A, a public servant, embezzles, he can be dealt with under the provisions of Section 405, P. C. Certain kinds of misconduct on part of public servants deserving of punishment are not provided for in the Code. Again, the punishments provided in this Chapter are not proportionate " either to the evil

which the abuse of power produces, or to the depravity of a man who, having been entrusted with power for the public benefit, employs that power to gratify his own cupidity and revenge." And the reason why the punishments awarded in this Chapter are not so severe as the punishments awarded in the other penal clauses of the Code is because, "in general, a penal clause sets forth the *whole* punishment which can be inflicted on an offender by any public authority, and no power in the State can make any addition to it. Whereas the penalty for an offence committed by a public functionary in the exercise of his public functions has been fixed on the supposition that it will often be only a part, and a small part, of the penalty he will suffer;" for, besides what is laid down in the Code, he may be censured, suspended, or dismissed, &c., &c.

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C) offenders convicted of offences specified in the Sections marked* in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment; but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death* or *transportation*, or *penal servitude* or imprisonment for *more than five years* shall be whipped.—Section 7, Act VI of 1864.

Trial by Jury does not extend to offences punishable under this Chapter. It is only for offences under Chapters VIII, IX, XVI, XVII, and XVIII, Penal Code, and for attempts and abetments thereof, that this mode of trial has been sanctioned by Notifications marginally noted.—Para. 3 of letter No. 187, from H. Ct., Calcutta, to S. J., Nuddea.

Government Notification, 7th Jany., 1862.
Government Notification, 27th May, 1862.
Government Notification, 13th Oct., 1862.

In the definition of legal remuneration contained in this Section, the word "Government" shall, for the purposes of Act XXXI, 1867, be deemed to include a Railway Company. See note on Section 21.

Uncog. Bailabl. Summons.

Ct. of S. or M. of D.

Public servant taking a gratification, other than legal remuneration, in respect of an official act.

*161. Whoever, being or expecting to be a public servant (21), accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or dis-service to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The Law Commissioners observe—"The punishment of fine will, we think, be found very efficacious in cases of this description, if the Judges exercise the power given them as they ought to do, and compel the delinquent to deliver up the whole of his ill-gotten wealth."

Charge under this Section should deal with separate motives in separate heads.—Para. 3, Letter No. 904, p. 138, Vol. V., R. J. P. J.

Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating (415), but he is not guilty of the offence defined in this Section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a.*) A, a Moonsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favor of Z. A has committed the offence defined in this Section.

(*b.*) A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of Rupees from the Minister of that power. It does not appear that A accepted this sum as a motive or reward for doing, or forbearing to do, any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favor in the exercise of his official functions to that power. A has committed the offence defined in this Section.

(*c.*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this Section.

Uncog. Bailable. Summons.

Taking a gratification in order, by corrupt or illegal means, to influence a public servant.

*162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification (161) whatever, as a motive or reward (161) for inducing, by corrupt or illegal means, any public servant (21) to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or dis-favor to any person, or to render or attempt to render any service or dis-service to any person with the Legislative or Executive Government of India, or with the Government of the Presidency, or with any Lieutenant-Governor, or with any public servant as such, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both. Ct. of S or M. of D.

Do. Do. Summons.

Taking a gratification for the exercise of personal influence with a public servant.

*163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification (161) whatever, as a motive or reward (161) for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant (21) to show favor or dis-favor to any person, or to render or attempt to render any service or dis-service to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public M. of D.

servant as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within the Section, inasmuch as they do not exercise or profess to exercise personal influence.

Ct. of S. or M. of D. — Uncog. Bailable. Summons.

Punishment for abetment by public servant of the offences above defined.

*164. Whoever, being a public servant (21), in respect of whom either of the offences defined in the last two preceding Sections is committed, abets (107) the offence, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

M. of D. or Sub. M., 1st Class. — Do. Do. Summons.

Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant.

*165. Whoever, being a public servant (21), accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom

he knows to have been, or to be, likely to be concerned in any proceeding or business transacted, or about to be transacted by such public servant, or having any connection with the official functions of himself or any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty Rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred Rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b.*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government Promissory Notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c.*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Uncog. Bailable. Summons.

Public servant disobeying a direction of the law, with intent to cause injury to any person.

M. of D or Sub. M., 1st Class.

*166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be

punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

A, a Deputy Commissioner, believes B to be a robber or villain. A, without form of law, and knowing well that there is no such law, deports B from his district and puts him across the Ganges. A has committed the offence here defined, and is liable to simple imprisonment for one year. Judicial Officers are protected for something done in good faith, but should also bear in mind definition Section 52.—*Vide* note on Section 52, page 82, Mr. Campbell's Circulars, J. C., O.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favor by a Court of Justice, knowingly disobeys that direction of law with a knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this Section.

Ct. of S. or M. of D. Uncog. Bailable. Summons.

Public servant framing an incorrect document with intent to cause injury.

*167. Whoever, being a public servant (21), and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document (29) in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

Injurious foreknowledge or intention must be established before a person can be held guilty under this Section.—P. 125, Vol. V., Part III, 1865, N. A., N. W. P.

Uncog. Bailable. Summons.

Public servant unlawfully engaging in trade.

*168. Whoever, being a public servant (21), and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. M. of D.

Do. Do. Summons.

Public servant unlawfully buying or bidding for property.

*169. Whoever, being a public servant (21), and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated. Do. Do.

Cog. Bailable. Warrant.

Personating a public servant.

*170. Whoever pretends to hold any particular office as a public servant (21), knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under color of such office, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. Any Mag.

Do. Do. Summons.

Wearing garb or carrying token used by public servant with fraudulent intent.

*171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants (21), with the intention that it may be believed, or with the knowledge Do. Do.

that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Two Hundred Rupees, or with both.

Vide Section 140, P. C. A similar offence is punished by that Section with imprisonment of either description for three months, and with fine extending to 500 Rupees, or with both.

CHAPTER X.

دسران باب

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

اختیارات جایر کي تحقیر کا بیان

By the provisions of this Chapter, local authorities are empowered to forbid acts which they consider as dangerous to the public peace, health, safety, or convenience, and disobedience of such order is an offence; but before the disobedience of any such order can be looked upon as an offence, the Court before which the party disobeying the order is tried, must be satisfied that the offender is guilty of having done something tending to cause obstruction, annoyance, or injury to any person lawfully employed. Section 188 in this Chapter provides a penalty for the infraction of an order promulgated by a Magistrate under Section 62, C. C. P. Referring to the former Section, the Law Commissioners observe—" On the one hand, it is absolutely necessary to have some local rules which shall not require the sanction of the Legislature; on the other there is great reason to apprehend much petty tyranny and vexation from such rules * * *. We have therefore thought it necessary to provide that no person should be punished merely for disobeying a local order, unless it be made to appear that the disobedience has been attended with evil or risk of evil."

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked* in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment; but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan.—(Para. 6, Circular No. 2, dated 8th April, 1864).—No *female*, nor any person sentenced to *death* or *transportation*, or *penal servitude* or imprisonment *for more than* 5 *years* shall be whipped. —Section 7, Act VI of 1864.

Uncog. Bailable. Summons. Any Mag.

Absconding to avoid service of summons or other proceeding from a public servant.

*172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant (21) legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or wtih fine which may extend to Five Hundred Rupees, or with both; or if the summons, notice, or order is to attend in person or by agent, or to produce a document (29) in a Court of Justice (20), with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

A party absconding to avoid service of warrant cannot be convicted for such offence under this Section. Such a case must be dealt with under Sections 183, 184, C. C. P.—Queen *v.* Omesh Chunder Ghose, 18th April, 1866, p. 61, Vol. I., R. C. C. R.

Do. Do. Summons. M. of D. or Sub. M., 1st Class.

Preventing service of summons or other proceeding, or preventing publication thereof.

*173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as

such public servant (21), to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Five Hundred Rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document (29) in a Court of Justice (20), with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Any Mag. Uncog. Bailable. Summons.

Non-attendance in obedience to an order from a public servant.

*174. Whoever, being legally bound (43) to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant (21), to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Five Hundred Rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person

or by agent in a Court of Justice (20), with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Illustrations.

(*a*) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this Section.

(*b*.) A, being legally bound to appear before a Zillah Judge as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this Section.

Uncog. Bailable. Summons.

Omission to produce a document to a public servant by a person legally bound to produce such document.

Ct in which the offence is committed, subject to provisions of Chapter X, P. C., or if not committed in a Ct, the M D or Sub M, 1st Class.

*175. Whoever, being legally bound (43) to produce or deliver up any document (29) to any public servant (21), as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Five Hundred Rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both. See C. C. P., 163, 164.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this Section.

M. of D. *176. Whoever, being legally bound (43) to give any notice, or to furnish information on any subject to any public servant (21), as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Five Hundred Rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, (Act IV, 1867,) (40), or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Uncog. Bailable. Summons.

Omission to give notice or information to a public servant by a person legally bound to give notice or information.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or local (42) law as therein defined, when the thing made punishable is punishable by such law with imprisonment for a term of six months or upwards, with or without fine.—Act IV of 1867.

Zemindars are not chargeable with the offences specified in Sections 176 and 202, P. C., in reference to provisions of Section 2, Regulation VIII of 1814, merely because they may have afforded no assistance whatever to the M. or Police in the investigation of a case of murder, and not have given any clue to the discovery of the perpetrators, unless they are shown to have withheld information which they possessed.—Government *v.* Huttee Doobey, p. 65, Vol. III, Part I, 1863, N. A., N. W. P.

LAWS REGARDING DUTIES AND RESPONSIBILITIES OF LANDHOLDERS AND THEIR AGENTS.

Section 3, Regulation XVII of 1795. Section 2, Regulation II of 1797. Section 2, Regulation VI of 1810. Sections 4 and 9, Regulation III of 1812. Section 2, Regulation VIII of 1814. Section 10, Regulation XX of 1817. Section 2, Regulation VI of 1825.

Some of the Regulation penalties are repealed, because for these the P. C. provides, but the responsibilities and obligations remain under which the persons so bound are liable to punishment under several Sections of P. C.—Page 5, Mr. Campbell's Circulars, J. C., O.

Uncog. Bailable. Summons. M of D. or Sub M., 1st Class.

Furnishing false information.

*177. Whoever, being legally bound (43) to furnish information on any subject to any public servant (21), as such, furnishes, as true, information on the subject which he knows or has reason to believe (26) to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both; or if the information which he is legally bound to give respects the commission of an offence (40) (Act IV of 1867), or is required for the purpose of preventing the commission of an offence, (40) (Act IV of 1867), or in order to the apprehension of an offender, with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or local (42) law as therein defined, when the thing made punishable is punishable by such law with imprisonment for a term of six months or upwards, with or without fine.—Act IV of 1867.

Illustrations.

(*a.*) A landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the District that the death has occurred by accident, in consequence of the bite of a snake. A is guilty of the offence defined in this Section.

(*b.*) A, a village watchman, knowing that a considerable body of strangers had passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under Clause 5, Section 7, Regulation III., 1821, of the Bengal Code, to give early and punctual information of the above fact to the Officer of the nearest Police Station, wilfully misinforms the Police Officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this Section.

Ct in which the offence is committed, subject to the provisions of Chap. X of this Code, or if not committed in Court, the Mag. of the District or Sub. M., 1st Class.

Refusing oath when duly required to take oath by a public servant.

Uncog. Bailable. Summons.

*178. Whoever refuses to bind himself by an oath (51) to state the truth, when required so to bind himself by a public servant (21) legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Do. Do.

Refusing to answer a public servant authorized to question.

Do. Do. Summons.

*179. Whoever, being legally bound (43) to state the truth on any subject to any public servant (21), refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.—See C. C. P., 163.

Uncog. Bailable. Summons.

Refusing to sign statement.

*180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant (21) legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to Five Hundred Rupees, or with both.—See C. C. P., 163.

Ct. in which the offence is committed, subject to the provisions of Chap. X. of this Code, or if not committed in a Court, the Mag. of the District or Sub. M., 1st Class.

Do. Do. Warrant.

False statement on oath to public servant or person authorized to administer an oath.

*181. Whoever, being legally bound (43) by an oath (51) to state the truth on any subject to any public servant (21) or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of S. or M. of D.

This Section refers to matters which do not come under the definition of judicial proceedings, and although the wording of the Section is apparently large enough to admit false statements of every description, its action is restricted as regards those made under certain circumstances by Section 193, P. C.—Queen *v.* Baloram, H. Ct., Calcutta, 20th May, 1867.

Do. Do.

False information, with intent to cause a public servant to use his lawful power to the injury of another person.

*182. Whoever gives to any public servant (21) any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will

M of D. or Sub. M., 1st Class.

thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Illustrations.

(*a.*) A informs a Magistrate that Z, a Police Officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this Section.

(*b.*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this Section.

M. of D. or Sub M., 1st Class. | Uncog. Bailable. Summons.

Resistance to the taking of property by the lawful authority of a public servant.

*183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant (21), knowing or having reason to believe (26) that he is such public servant, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Uncog Bailable. Summons.

M of D. or Sub M, 1st Class.

Obstructing sale of property offered for sale by authority of a public servant.

*184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant (21), as such, shall be punished with imprisonment of either description (53) for a term which may extend to one month, or with fine which may extend to Five Hundred Rupees, or with both.

Do. Do. Summons.

Do. Do.

Illegal purchase or bid for property offered for sale by authority of a public servant.

*185. Whoever, at any sale of property held by the lawful authority of a public servant (21), as such, purchases or bids for any property on account of any person (11), whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description (53) for a term which may extend to one month, or with fine which may extend to Two Hundred Rupees, or with both.

Do. Do.

A person is guilty of contempt under this Section by bidding for the lease of a ferry sold at public auction by the Magistrate, and failing to complete the sale.—P. 38, Vol. V., R. J. P J

Do Do. Summons.

Obstructing public servant in discharge of his public functions

*186. Whoever voluntarily (39) obstructs any public servant (21) in the discharge of his public functions shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Five Hundred Rupees, or with both.

A person who took a receipt from an Income Tax Mohurrir

without paying the tax was not punishable under this Section for obstructing the Mohurrir in the discharge of his public duties.—Government *v.* Madho Singh, p. 63, Vol. III., Part I of 1863, N. A., N. W. P.

A Civil Court must itself, under Section 25, Reg. IV., 1793, punish a simple resistance of its process, and not make the case over to the Magistrate. So long as Section 25, Reg. IV, 1793, is in force, the Civil Court should exercise the jurisdiction vested in it by law.—H. Ct., Calcutta, 22nd April, 1868, R. C. C. R., p. 63, Vol. V.

A got a decree against B in the lower Court for Rupees 24, and executed it. The lower Court's order was appealed against, and the order of the Appellate Court was to stay execution of decree until case was settled in the Settlement Court. On perusal of Appellate Court's decision, the lower Court called on A to refund the money, and on A's non-compliance, A was brought before Magistrate under this Section, and punished. This was undoubtedly wrong, for there is no law under which lower Court had authority to demand restoration of money realized in execution of a decree. The remedy might be had by application to Court of Appeal, which could review its order on the representation of the appellant, that the former order to stay execution is of no effect, because the Appellate Court did not know that execution had already taken place.

M. of D. or Sub. M., 1st Class.

Omission to assist public servant when bound by law to give assistance.

*187. Whoever, being bound by law (43) to render or furnish assistance to any public servant (21) in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Two Hundred Rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued

Uncog. Bailable. Summons.

by a Court of Justice (20), or of preventing the commission of an offence (40) Act IV, 1867, or of suppressing a riot (146) or affray (159), or of apprehending a person charged with, or guilty of, an offence (40) Act IV, 1867, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to Five Hundred Rupees, or with both.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or local (42) law as therein defined. Act IV of 1867. —*Vide* note on Section 176.

Uncog Bailable. Summons.

M. of D. or Sub M., 1st Class.

Disobedience to an order duly promulgated by a public servant.

*188. Whoever, knowing that, by an order promulgated by a public servant (21) lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes, or tends to cause, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Two Hundred Rupees, or with both; and if such disobedience causes, or tends to cause, danger to human life, health, or safety, or causes, or tends to cause, a riot (146) or affray (159), shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may

extend to One Thousand Rupees, or with both. —See C. C. P., 62-63.

If a person in possession of, or having control over, a well or tank, will not obey the order passed under this Section, or show cause, or petition for a jury against the same, he is liable, under Section 311 of C. C. P., to penalty prescribed on that behalf in Section 188, P. C., and Magistrate may proceed to carry out the order at his expense.—Circular No. 24 of 1865, J. C., O.

This Section should be read with Section 62, C. C. P.; the former provides a penalty for the infraction of orders promulgated by a Magistrate under the latter Section.

A decree promulgated by a Civil or Revenue Court is not an order within the meaning of this Section 188, P. C.—Circular No. 52 of 1866, J. C., O.

Held that a sentence of fine for disobedience to an order is only lawful under Section 188, P. C., when order is passed by a public servant lawfully empowered to promulgate such order. —Govt. *v.* Ukber Ali Khan, p. 213, Vol. II., Part III., N. A., N. W P., 1862.

Explanation. It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this Section.

Uncog. Bailable. Summons.

Threat of injury to a public servant.

M. of D. or Sub. M., 1st Class.

*189. Whoever holds out any threat of injury (44) to any public servant (21), or to any person (11) in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act (33), or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Do. Do. Summons.

Threat of injury to induce any person to refrain from applying for protection to a public servant.

M. of D. or Sub. M., 1st Class.

*190. Whoever holds out any threat of injury (44) to any person (11) for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant (21) legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.

گیارهنوان باب

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

جهوتي گواهي

"Many offences which interfere with the administration of justice are sufficiently provided for in other chapters, particularly in the chapter relating to contempts of the lawful authority of public servants. The rules touching the offence of attempting to impose on a Court of Justice by false evidence differ from those of the English law. It appears in the first place that the offence designated as the 'fabricating of false evidence' is not punished with adequate severity under the systems referred to by Law Commissioners. This may perhaps be because the offence, in its aggravated forms, is not one of very frequent occurrence in Western countries. It is notorious, however, that in this country the practice is exceedingly common, and for obvious reasons * * *. In countries in which the standard of morality is high, direct evidence is generally considered as best evidence * * *. But in India the case is different * * *. In England, a person who wishes to impose on a Court of Justice knows he is likely to succeed best by perjury, or subornation of perjury. But in India, where a Judge is generally on his guard against direct false evidence, a more artful mode of imposition is frequently employed. A lie is often conveyed to a Court, not by means of witnesses, but by means of circumstances, precisely because circumstances are less likely to lie than witnesses. These two modes of imposing on the tribunals appear equally wicked and equally mischievous. It will indeed be harder to bring home to an offender the fabricating of false evidence. But wherever the former offence is brought home, we would punish it as severely as the latter." (L. C. R.) By Section 24, Act VIII, 1859, false statements made in declarations mentioned in Sections 27, 118, and 164, Act VIII,

1859, are punishable under the provisions of this chapter. It should be borne in mind that in commitments for giving false evidence, under provisions of the sections of this chapter, the committing officer should invariably insert on the charge the *particular statement* on which perjury is assigned.

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment; but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death* or *transportation*, or *penal servitude* or imprisonment *for more than 5 years*, shall be whipped.—Sec. 7, Act VI of 1864.

Given false evidence.

جھوٹي گواهي

191. Whoever, being legally bound (43) by an oath (51), or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

***Explanation* 1. A statement is within the meaning of this Section, whether it is made verbally or otherwise.**

Held that the mere failure to prove an averment in a Civil suit does not constitute perjury, and to prove that offence, the falsity of the averment must be clearly substantiated.—Government *v.* Rutnah, Vol I, Part 1, p. 1, January to March, Nizamut Adawlut, 1861.

A swears before a Magistrate that he saw prisoner kill B. On the trial, A swears that he did not see prisoner kill B, and prisoner is acquitted. A thereupon is committed for giving false

evidence, and two heads of charge in the alternative form are drawn up. *Held*, that although, of the two statements, the one on which the perjury rests cannot be particularized, a finding that A has intentionally given false evidence, and that he is guilty either of the offence specified in the first, or of the offence specified in the second, head of the charge, is legally admissible. (J. Campbell dissenting). *In re* Musst. Zumeerun, 31st August, 1866, p. 49, Vol. II., R. C. C. R.

In all cases for giving false evidence, the charge should show on the face of it the particular matter in respect of which the charge is made. (*See* Circular Order No. 3, 1866, 5 W. R, p. 2, Criminal Circular; also note on Section 193, P. C.) There may be an alternative conviction in a case in which the evidence proves the commission of one of two offences falling within the same section of the P. C., and it is doubtful which of such offences has been proved. (*Vide* case of Musst. Zumeerun, II R. C. C. R., 49, Criminal, and note above this.) But it must be borne in mind that a man cannot be put on his trial on a charge containing only one head, but framed in the alternative. For examples, see R. C. C. R, Vol. V., No. 7, p. 34, Queen *v.* Soonder Mohooree, dated 2nd March, 1868.

Explanation 2. A false statement as to the belief of the person attesting is within the meaning of this Section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*.) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here

A states that which he knows to be false, and therefore gives false evidence.

(*c.*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z, A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d.*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named, or not.

(*e.*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

جهوٹي گواهي بنانا

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding (193), or in a proceeding taken by law before a public servant (21), as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

Illustrations.

(*a.*) A puts jewels into a box belonging to Z with the

intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b.*) A makes a false entry in his shop book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c.*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

Ct. of S. Uncog. Bailable. Warrant.

Punishment for false evidence.

*193. Whoever intentionally gives false evidence (191) in any stage of a judicial proceeding, or fabricates false evidence (192) for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. (*Vide* note on Section 242, C. C. P., also on Section 211, P. C.)

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, H. Ct., Calcutta, 8th April, 1864.

Proceedings taken under Section 318, C. C. P., are "judicial proceedings" in sense of Section 193, P. C., even though they may

possibly not terminate in judgment.—Queen *v.* Baloram, H. Ct., Calcutta, 20th May, 1867.

In commitments for giving false evidence under Sections 193-4-5, committing officer shall invariably insert on the charge the particular statement on which perjury is assigned.—H. Ct., Calcutta, Circular No. 3 of 1866. Circulars Nos. 5 and 24 of 1866, Judicial Commissioner, Oudh.

A prisoner ought not to be convicted and sentenced both under Sections 211 and 193, Penal Code, when these offences are committed simultaneously and by the same act.—Para. 7, No. 927, page 138, Vol. V., R. J. P. J.

Attempt to fabricate false evidence before Police how punishable. The maximum punishment for the offence is 7 years of either description. An attempt to commit the above offence is punishable under the provisions of Section 511, P C., but the term of imprisonment cannot be extended beyond one-half of the longest term provided for the substantive offence.

A Civil Court sanctioning a criminal prosecution for giving false evidence, must distinctly state the exact words upon which the prosecution is based, and must not sanction such proceedings generally.

A general sanction by a Judge to a prosecution for giving false evidence under Section 193, P. C., and for false verification, is not sufficient. The *exact words* upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. The verification of an application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not under Section 120, Act VIII of 1859, but under Section 209, Act VIII of 1859, and need not, therefore, be verified. Documents tendered in a Civil suit, if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence.—Cr. R., Weekly R., p. 58, Vol. IX, 14th April, 1868.

Illustration.

A, in an enquiry before a Police Officer vested with the power

of holding preliminary enquiries into cases involving an infraction of salt laws, deposes that certain parties had concealed in their houses illicit salt, which would be found if a search were made. A is found to have concealed about his body two earthen vessels containing illicit salt. A, who is an informer, intends placing the illicit salt in the houses of parties charged, to serve as evidence against them. The prisoner A is guilty of attempting "to fabricate" false evidence in a stage of judicial proceeding. Maximum punishment under Section 193 is 7 years. An attempt of ditto under Section 511, term of imprisonment cannot extend beyond one-half of longest term (7 years) provided for substantive offence. A is therefore liable to 3½ years, either description.

Explanation 1. A trial before a Court-Martial or before a Military Court of Request is a judicial proceeding.

Explanation 2. An investigation directed by law preliminary to a proceeding before a Court of Justice (20), is a stage of a judicial proceeding (193), though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of judicial proceeding, A has given false evidence.

Explanation. 3. An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of

Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of judicial proceeding, A has given false evidence.

Uncog. Not bailable. Warrant.

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

Ct. of S.

194. Whoever gives (191) or fabricates false evidence (192), intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence (40) (Act IV, 1867) which is capital—(1) Murder (2) Abetment of suicide of a child under 18 years,—person of unsound mind,—one who is intoxicated. (3) Being member of a gang of dacoits by whom murder is committed. (4) Waging war against Queen. (5) Abetting mutiny. (6) Giving or fabrication false evidence with intent to procure conviction of a capital offence)—by this Code, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described (53).

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be again convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, H. Ct., Calcutta, dated 8th April, 1864.

Ct. of S.

Uncog. Bailable. Warrant.

Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment.

*195. Whoever gives (191) or fabricates false evidence (192), intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence (40) (Act IV, 1867) which by this Code is not capital, but punishable with transportation for life, (75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) or imprisonment for a term of seven years or upwards, (115, 118, 124, 127, 134, 193, 195, 201, 211, 213, 214, 216, 219, 222, 225, 231, 234, 243, 245, 247, 249, 256, 260, 281, 308, 312, 317, 325, 330, 363, 365, 369, 370, 380, 381, 387, 393, 401, 402, 404, 407, 408, 420, 433, 535, 451, 452, 466, 469, 472, 477, 494, 496, 506,) shall be punished as a person convicted of that offence would be liable to be punished.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be again convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2 of 8th April, 1864.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or with-

out fine. A therefore is liable to such transportation or imprisonment, with or without fine.

In commitments for giving false evidence under Sections 193-4-5, the committing officer should invariably insert in the charge the particular statements on which perjury is assigned.—Circular No. 3, 9th February, 1866, page 15, Vol. I., R. C. C. R. C. O. No. 14, 11th May, 1866, N. A., N. W. P.

Uncog. According as offence of giving such evidence is bailable or not.

Warrant.

Using evidence known to be false.

*196. Whoever corruptly uses or attempts to use as true or genuine evidence, any evidence which he knows to be false (191) or fabricated (192), shall be punished in the same manner as if he gave or fabricated false evidence. Ct. of S.

Uncog. Bailable.

Warrant.

Issuing or signing false certificate.

*197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence (191). Do. Do.

Do. Do.

Warrant.

Using as a true certificate one known to be false in a material point.

*198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence (191). Do. Do.

Do. Do.

Warrant.

False statement made in any declaration which is by law receivable as evidence.

*199. Whoever in any declaration made or subscribed by him, which declaration any Court of Justice (20), or any public servant (21) or other person, Do. Do.

(11) is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence (191).

Declarations mentioned in Sections 27, 118, and 164, Act VIII of 1859, are herein referred to.

Ct. of S. *200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence (191). Uncog. Bailable. Warrant.

Using as true any such declaration known to be false.

Explanation. A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of Sections 199 and 200.

Do. Do. *201. Whoever, knowing or having reason to believe (26) that an offence (40) has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence (40) (Act IV, 1867) which he knows or believes to have been committed is punishable with death, (302, 303, 305, 396, 121, 132, 194,) be punished with imprisonment of Do. Do. Warrant.

Causing disappearance of evidence of an offence committed, or giving false information touching it, to screen the offender.—If a capital offence.

Do. Do. If punishable with transportation. Do. Do. Warrant.

either description for a term which may extend to seven years, (115, 118, 124, 127, 134, 193, 195, 201, 211, 213, 214, 216, 219, 222, 225, 231, 243, 245, 247, 249, 256, 260, 281, 308, 312, 317, 325, 330, 363, 365, 369, 370, 380, 381, 387, 393, 401, 402, 404, 407, 408, 420, 433, 435, 451, 452, 466, 468, 472, 477, 494, 496, 506,) and shall also be liable to fine; and if the offence is punishable with transportation for life, (75, 121, 122, 128-130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) or with imprisonment which may extend to ten years, (119, 122, 123, 128, 131, 132, 194, 225, 232, 235, 238, 240, 251, 255, 304, 307, 313, 316, 326, 329, 331, 333, 364, 366, 367, 371, 373, 376, 377, 382, 386, 388, 389, 392, 394, 396, 399, 400, 409, 412, 413, 436, 439, 449, 450, 454, 455, 459, 460, 467, 493, 495,) shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence (40) (Act IV, 1867) is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

If punishable with less than ten years' imprisonment.

Uncog Bailable. Warrant.

Ct. of S.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined, when the thing made punish-

able is punishable by such law with imprisonment for a term of six months or upwards, with or without fine.—Act IV of 1867.

Separate punishment should not be awarded when the prisoner has caused grievous hurt and personally committed the offence described in this Section, as this Section applies to the causing the disappearance of an offence committed by another, not by oneself.—Letter 242, 14th March 1866, page 19, Vol I., R. C. C. R.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Sections 201 and 218. A Police Officer was charged under Section 201, that he, having reason to believe that an offence had been committed, gave an incorrect information regarding this offence, which he knew or believed to be false, with intent to screen the offenders. Under Section 218, that he, being a Police Officer, framed a record, *viz.*, his police diary and report, incorrectly, with intent to save certain persons from punishment. The issue to be tried was whether at the time A prepared his diary, he knew, or had reason to believe, that B and C, charged with death of D, were guilty, or whether he framed his record falsely to screen B and C. On the trial, the Judge, in putting before the jury, as a matter on which their verdict was called for, the fact that B and C were subsequently brought to trial and convicted, misdirected the jury. The subsequent conviction was no evidence at all, as against A, that B and C were in truth guilty, and if it had been evidence of B and C's guilt, such evidence was for the purposes of A's trial irrelevant.—See note on Section 328, C. C. P., (R. C. C. C., p. 27, Vol. IV.)

M. of D. *202. Whoever, knowing or having reason to believe (26) that an offence (40) has been committed, intentionally omits to give any information respecting that offence (40), (Act IV.,

Uncog. Bailable. Summons.

Intentional omission to give information of an offence, by a person bound to inform.

1867) which he is legally bound to give (43), shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine, or with both.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined, when the thing made punishable by such law is punishable with imprisonment for a term of six months or upwards, with or without fine.—Act IV. of 1867. *Vide* notes on Section 176.

A conviction for intentionally omitting to give information of an offence which has *not been proved to have been committed*, cannot be sustained under this Section. There is a law which might cover the conviction, *viz.*, the first portion of Section 2, Regulation VIII of 1814.—R. C. C. R., Part III, p. 2, Vol. I.

Uncog. Bailable. Warrant.

Giving false information respecting an offence committed.

*203. Whoever, knowing or having reason to believe (26) that an offence (40) has been committed, gives any information respecting that offence (40), (Act IV, 1867) which he knows or believes to be false, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. M. of D.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Do. Do. Warrant.

Destruction of document to prevent its production as evidence.

*204. Whoever secretes or destroys any document (29) which he may be lawfully compelled to produce as evidence in a Court of Justice (20), or in any proceeding lawfully held before a public servant (21), as such, or obliterates or renders illegible the Do. Do.

whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

A person merely withholding a document, or not producing it on a false pretence, cannot be convicted of the offence of secreting such document specified in this Section.—P. 64, Vol. III, Part I, Government *v.* Buldeo, 1863, N. A., N. W. P.

(a) Ct. of S.

Uncog. Bailable. Warrant.

False personation for the purpose of any act or proceeding in a suit.

*205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

To constitute false personation under this Section, it is not enough to show the assumption of a fictitious name. It must also be shown that the assumed name was used as a means of representing some other known individual. A *mere* 'alias' or 'incog.' is no crime. The gist of the offence in this Section 205 is the feigning to be *another known person.* There are Sections of the Penal Code under which the false assumption of appearance or character may be an offence, though no individual is meant to be represented, or only an imaginary person, for instance, 140, 170, 171, and 415; and the last is made applicable to personation of an imaginary person by an express enactment.—Regina *v.* Kather Rowtan, &c., Madras Jurist, No. 4, Vol. III., p. 147.

(a) By new Bill, Ct. of S. or M. of D.

Uncog. Bailable. Warrant.

M. of D. or Sub. M., 1st Class.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

*206. Whoever fraudulently (25) removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice (20) or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a Civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Do. Do. Warrant.

Do. Do.

Fraudulent claim to property to prevent its seizure as a forfeiture or in execution of a decree.

*207. Whoever fraudulently (25) accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice (20) or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a Civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

M. of D. *208. Whoever fraudulently (25) causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. Uncog. Bailable. Warrant.

Fraudulently suffering a decree for a sum not due.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this Section.

Do. Do. *209. Whoever fraudulently (25) or dishonestly (24), or with intent to injure (44) or annoy any person (11), makes in a Court of Justice (20) any claim which he knows to be false, shall be punished with imprisonment of either description (53) for a term which may extend to two years, and shall also be liable to fine. Do. Do. Warrant.

Dishonestly making false claim in a Court of Justice.

Do. Do. *210. Whoever fraudulently (25) obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any pro- Do. Do. Warrant.

Fraudulently obtaining a decree for a sum not due.

perty or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Uncog Bailable. Warrant. M. of D.

False charge of offence made with intent to injure.

*211. Whoever, with intent to cause injury (44) to any person (11), institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, (40) (Act IV, 1867,) knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, imprisonment for seven years or upwards, shall be punishable with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be again convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C. —Section 4, Act VI. of 1864. See also paragraphs 3, 4, and 5, Circular No. 2, dated 8th April, 1864.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined. Act IV. of 1867.

The mere presentation of a petition containing a false allegation, but not praying for judicial enquiry or penal proceedings, does not constitute the offence specified in Section 211, P. C., p. 43, Vol. III, Part I, N. A., N. W. P., 1863.

A false charge deliberately made before a Police Officer in view to, its being brought before a Magistrate, brings the party making it within the provision of Section 211, P. C.—Para 5, No. 1155, December 18th, 1865, R. C. C. R., Vol. I., p. 7.

If accused does not know at the time he makes the complaint that there are no just and lawful grounds for making the complaint, he cannot be convicted under this Section.—P. 11, Vol. II., R. C. C. R.

The fact that information upon which a false charge was preferred was not carefully tested by the complainant, is not a ground for indictment under this Section. If accused does not know at the time he makes the complaint that there are no just and lawful grounds for making the complaint, he cannot be convicted under this Section.—25th June, 1866, p. 11, Vol. II., R. C. C. R.

A complainant is not liable to punishment under this Section in *all* cases in which the prosecution fails, or in which the "accused person" is acquitted. *This* Section is applicable to those cases only in which the charge is "*falsely*" made "*with intent to cause injury, and with the knowledge that there is no just or lawful ground for such charge.*" Want of reasonable or probable cause may raise a presumption of such knowledge and intent; but a mere failure to obtain a conviction would not, of itself, be sufficient to warrant the presumption.—No. 19, Vol. I., p. 170, Clause 7, R. J. P. J.

Under Section 211, the instituting a criminal proceeding with intent to injure, knowing there to be no just or lawful ground for such, may be treated as an offence distinct from the falsely charging a person with having committed an offence. A Police

Officer, though acting upon the information of an informer, may be said to *institute* criminal proceedings against the person charged by him; and the consent of his superior officer to the course pursued, will not guarantee him from the consequences of bad faith. The prosecution, when establishing the fact that a Police Officer acted knowing there to be no just grounds for proceeding, is bound to call all those on whose statements such officer said he acted.—R. C. C. R., p. 8, Vol. V.

Cog. Bailable. Warrant. — Ct. of S.

Harbouring an offender.

*212. Whenever an offence (40) (Act IV 1867) has been committed, whoever harbours or conceals a person whom he knows or has reason to believe (26) to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death (302, 303, 305, 396, 121, 132, 194,) be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence is punishable with transportation for life, (75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine, and if the offence is punishable with imprisonment, which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may

Do. Do. Warrant. — If a capital offence. — Do. Do.

Do. Do. Warrant. — If punishable with transportation for life, or with imprisonment. — (a) Do. Do.

Cog. Bailable. — Ct. by which offence is triable.

(a) New Bill, Ct. of S. or M. of D.

extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined, when the thing made punishable by such law is punishable with imprisonment for a term of six months or upwards, with or without fine.—Act IV of 1867.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Ct. of S. Uncog. Bailable. Warrant.

Taking gift, &c., to screen an offender from punishment.

*213. Whoever accepts, or attempts to obtain, or agrees to accept, any gratification (161) for himself or any other person (11), or any restitution of property to himself or any other person, in consideration of his concealing an offence (40) (Act IV, 1867) or of his screening any person from legal punishment for any offence (40) (Act IV, 1867), or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, (302, 303, 305, 396, 121, 132, 194,) be punished with imprisonment of either description for a term which may extend to seven

Do. Do. If a capital offence. Do. Do. Warrant.

years, and shall also be liable to fine; and if the offence is punishable with transportation for life, (75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 449, 459, 460, 467, 472, 474, 475, 477,) or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description (53) provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Uncog. Bailable. Warrant. — If punishable with transportation for life, or with imprisonment. — (a) Ct. of S.

Do. Do. — Ct by which offence is triable.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Adultery, which may be the subject of Civil action, is by the exception not an offence of the kind contemplated by this Section, and it is not punishable to take a gift for "not proceeding against the adulterer."—Queen *vs.* G. R. Smith, 5th December 1865. *Vide* note by Ed., R. C. C. R., and note on Section 214, P. C.

Do. . Do. Warrant. — Ct. of S.

*214. Whoever gives or causes, or offers or agrees to give or cause, any gratification (161) to any person (11), or to restore or cause the restoration of any property (22) to any person, in consideration of that person's concealing an offence (40) Act IV, (1867), or of his screening any person from legal

Offering gift or restoration of property in consideration of screening offender.

(a) New Bill, Ct. of S, or M, of D.

punishment for any offence (40) (Act IV, 1867), or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, (302, 303, 305, 396, 121, 132, 194,) be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, (75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Ct. of S. — If a capital offence. — Uncog. Bailable. Warrant.

Do. Do. — Do. Do. Warrant.

If punishable with transportation for life or with imprisonment. — Warrant.

Ct. by which offence is triable. — Uncog. Bailable.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein contained.—Act IV of 1867.

Certain offences may be compounded, others may not. A simple assault or an adultery may be compounded, while to compound a theft or murder is penal. The element of a defined intention as a necessary part of an offence, and the right to bring a civil action, are made the tests by which these two

classes are distinguished.—P. 84, Mr. Campbell's Circular, J. C., O.

A person cannot be held to have committed the offence defined in this Section, merely because he had caused the restoration of stolen property where there was no evidence of his having bargained for the condonement of the offence of the theft, or of his having caused the restoration of the property in consideration of the concealment of the offence or abandonment of legal proceedings against the offenders by aggrieved party.—Government *vs.* Deenoo, &c., p. 191, Vol. III, Part IV, 1863, N. A., N. W. P

Exception.—The provisions of Sections 213 and 214 do not extend to any case in which the offence consists only of an act, irrespective of the intention of the offender, and for which act the person injured may bring a civil action.

Illustrations.

(*a.*) A assaults B with intent to commit murder. Here, as the offence does not consist of the assault only, irrespective of the intention to commit murder, it does not fall within the exception, and cannot therefore be compounded.

(*b.*) A assaults B. Here, as the offence consists simply of the act, irrespective of the intention of the offender, and as B may have a civil action for the assault, it is within the exception, and may be compounded.

(*c.*) A commits the offence of bigamy. Here, as the offence is not the subject of a civil action, it cannot be compounded.

(*d.*) B commits the offence of adultery with a married woman. The offence may be compounded.

(a) Cog. Bailable. Warrant.

Taking gift to help to recover stolen property, &c.

*215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by M. of D.

(a) By New Bill Uncog.

any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of S. — Cog. Bailable. Warrant.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

*216. Whenever any person convicted of or charged with an offence (40) being in lawful custody for that offence (40) (Act IV, 1867), escapes from such custody, or whenever a public servant (21), in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence (40) (Act IV, 1867), whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say, if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, (302, 303, 305, 396, 121, 132, 194,) he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if the offence is punishable with transportation for life (75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) or imprisonment for ten years, he shall be punished with imprisonment of

Do. Do. If a capital offence. — Do. Do. Warrant.

(a) Do. Do. If punishable with transportation for life or with imprisonment. — Do. Do. Warrant.

(a) By new Bill, Ct. of S. or M. of D.

either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the description (53) provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

Cog. Bailable. Ct. by which offence is triable.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined, when the thing made punishable by such law is punishable with imprisonment for six months or upwards, with or without fine.—Act IV of 1867.

Uncog Bailable Summons. M. of D. or Sub M., 1st Class.

Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.

*217. Whoever, being a public servant (21), knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

A public notary is not liable to punishment under the provisions of this Section. for registering an insufficiently stamped deed, unless it be proved that he knowingly disobeyed the law. J. C, O. Circular No. 53 of 1866.

To a conviction under this Section, it is only necessary to show that the defendant knew that the person he released was in danger of punishment, and that defendant acted with the intention of saving him —*In re* Abdool Julleel, Vol. II., p. 112, R. J. P. J.

(a) Ct of S. *218. Whoever, being a public servant (21), and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury (44) to the public (12) or to any person (11), or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both. Uncog. Bailable. Warrant.

Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.

Do. Do. *219. Whoever, being a public servant (21), corruptly or maliciously makes or pronounces in any stage of a judicial proceeding any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, or with fine, or with both. Do. Do. Warrant.

Public servant in a judicial proceeding corruptly making an order, report, &c., which he knows to be contrary to law.

(a) By new Bill, Ct. of S. or M. of D.

Uncog. Bailabl. Warrant. Ct. of S.

Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.

*220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person (11) in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, or with fine, or with both.

Do. Do. Warrant. Do. Do.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.

*221. Whoever, being a public servant (21), legally bound (43) as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence (40) (Act IV, 1867), intentionally omits (33) to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Punishment.

Do. Do. Do. Do.

With imprisonment of either description (53) for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with death (302, 303, 305, 396, 121, 132, 194); or

Do. Do. Do. Do.

With imprisonment of either description for a term which may extend to three years, with or

without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with transportation for life (75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) or imprisonment for a term which may extend to ten years; or

M D or Sub M, 1 t Class. With imprisonment of either description (53) for a term which may extend to two years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years. Uncog Bailable.

This Section is to be construed as if the word "offence" denoted anything made punishable by P C, or by any *special* (41) or *local* (42) law as therein defined.—Act IV. of 1867.

Ct of S. *222. Whoever, being a public servant (21), legally bound (43) as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice (20) for any offence (40) (Act IV, 1867), intentionally omits (33) to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:— Cog Not bailable (a) Warrant.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice.

Punishment

(a) By new Bil Uncog.

With transportation for life or with imprisonment of either description (53) for a term which may extend to fourteen years, with or without fine, if the person in confinement or who ought to have been apprehended is under sentence of death ; or

With imprisonment of either description (53) for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended is subject, by a sentence of a Court of Justice (20), or by virtue of a commutation of such sentence, to transportation for life, or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

Uncog Bailable. With imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended is subject by a sentence of a Court of Justice to imprisonment for a term not extending to ten years. Ct. of S. or M. of D.

This Section is to be construed as if the word "offence" denoted anything punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867, Section 1.

Also to be construed as if after the word "offence" the words "or if the person was lawfully committed to custody" were inserted.—Act IV of 1867, Section 2.

Do. Do. Summons. * 223. Whoever, being a public servant (21), legally bound (43) as such public servant to keep in confinement any person (11). charged with or convicted of any offence (40) (Act IV, 1867), negli- M. of D. or Sub. M. 1st Class.

Escape from confinement negligently suffered by a public servant.

gently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867, Section 1.

Also to be construed as if after the word "offence" the words "or lawfully committed to custody" were inserted.—Section 2, Act IV of 1867.

Convicts promoted to be "convict warders" or "convict work overseers" are not public servants within the meaning of this Section.—Para. 2, No. 961, 1865, p. 140, Vol. V., R. J. P. J.

M of D or Sub M., 1st Class. Cog. Bailable. Warrant.

Resistance or obstruction by a person to his lawful apprehension.

*224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence (40) (Act IV, 1867), with which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence (40) (Act IV, 1867), shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

A prisoner escaping from Havalat may be tried and sentenced under this Section 224 previous to his being tried for the crime for which he was originally apprehended.—(*Vide* note on Section 47, C. C. P.) Vol. II., No. 480, 1864, R. C. C. R.

The absconding of a prisoner, arrested under Section 101,

C. C. P., does not render him liable to be punished under this Section.—No. 345, 14th April, 1866, p. 26, Vol. I, R. C. C. R.

The punishment for escape from lawful custody must be in addition to the punishment awarded for the substantive offence. Contemporaneous sentences are not legal. Where such had been awarded, the High Court separated the sentences, making them run oneo n the expiry of the other.—Queen *vs.* Dhoonda Boya, R. C. C. R., p. 7, Vol. V.

Explanation. The punishment in this Section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Cog. Bailable. Warrant. M of D. or Sub. M., 1st Class.

Resistance or obstruction to the lawful apprehension of another person.

*225. Whoever intentionally offers any resistance or illegal (43) obstruction to the lawful apprehension of any other person for an offence (40) (Act IV, 1867), or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence (40) (Act IV, 1867), shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Punishment.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

It was held that Section 225, P. C., is not restricted to cases in which the person making the arrest is a Police Officer, but that it applies to any lawful apprehension. No. 463, 1863, Vol. I., p. 235, R. J. P. J.

Cog. Not bailable. Ct of S. or M. of D.

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged

with or liable to be apprehended for an offence punishable with transportation for life, (75, 121, 122, 125, 128, 130, 131, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine;

Ct. of S. Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, (302, 303, 305, 396, 121, 122, 194,) shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine; Cog. Not bailable.

Do. Do. Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice (20), or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; Do. Do.

Do. Do. Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description (53) for a term Do. Do.

not exceeding ten years, and shall also be liable to fine.

These Sections to be construed as if the word "offence" denoted anything punishable by the said Code (P. C.) or by any *special* or *local* law as therein defined.—Mr. Maine's Bill, Simla, July 30th, 1866.

Cog. Not bailable. Warrant. Ct. of S.

Unlawful return from transportation.

*226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Uncog. Not bailable. Summons. Ct by which offence is triable.

Violation of condition of remission of punishment.

*227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Uncog. Bailable. Summons. Ct. in which the offence is committed, subject to provisions in Chap. X, P. C.

Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

*228. Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant (21) is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term

which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

M. of D

Personation of a juror or assessor.

*229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn; or, knowing himself to have been so returned, empanelled, or sworn, contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Uncog. Bailable. Summons.

CHAPTER XII.

برھوان باب

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

سکے اور گورنمنت استامپ کا بیان

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.,) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864.) No *female*, nor any person sentenced to *death* or transportation, or penal

servitude or imprisonment for more than five years, shall be whipped.—Section 7, Act VI of 1864.

Coin.
سکہ

230. Coin is metal used as money stamped and issued by the authority of some Government (17) in order to be so used.

Queen's coin.
ملکہ معظمہ کا سکہ

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

Illustrations.

(*a*) Cowries are not coin.

(*b*.) Lumps of unstamped copper, though used as money, are not coin.

(*c*.) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*.) The coin denominated as the Company's Rupee is the Queen's coin.

Cog Not bailable. Warrant. Ct. of S.

Counterfeiting coin.
تلبیس سکہ

*231. Whoever counterfeits (28), or knowingly performs any part of the process of counterfeiting coin (230), shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Explanation. A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Ct of S. *232. Whoever counterfeits (28), or knowingly performs any part of the process of counterfeiting, the Queen's coin (230), shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Cog Not bailable. Warrant.

Counterfeiting the Queen's coin.

تلبیس سکه ملکه معظمه

Do. Do. *233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument for the purpose of being used, or knowing or having reason to believe (26) that it is intended to be used, for the purpose of counterfeiting (28) coin, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine. Do. Do. Warrant.

Making or selling instrument for counterfeiting coin.

Do. Do. *234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument for the purpose of being used, or knowing or having reason to believe (26) that it is intended to be used, for the purpose of counterfeiting (28) the Queen's coin (230), shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Do. Do. Warrant.

Making or selling instrument for counterfeiting Queen's coin.

(a)Do. Do. *235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeit- Do. Do. Warrant.

Possession of instrument or material for the purpose of

(a) By new Bill, Ct. of S. or M. of D.

using the same for counterfeiting coin.

ing (28) coin, or knowing or having reason to believe (26) that the same is intended to be used for that purpose, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cog Not bailable. Warrant. Ct. of S.

Abetting in India the counterfeiting out of India of coin.

*236. Whoever, being within British India (15), abets (107) the counterfeiting (28) of coin (230) out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Do. Do. Warrant. Do. Do. (a)

Import or export of counterfeit coin.

*237. Whoever imports into British India (15), or exports therefrom, any counterfeit (28) coin, knowing or having reason to believe (26) that the same is counterfeit, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Import or export of counterfeits of the Queen's coin.

*238. Whoever imports into British India (15), or exports therefrom, any counterfeit (28) coin which he knows or has reason to believe (26) to be a counterfeit of the Queen's coin (230), shall be punished with transportation for life, or with imprisonment of either description (53) for a term which

(a) By new Bill, Ct. of S. or M. of D.

may extend to ten years, and shall also be liable to fine.

Ct of S *239. Whoever, having any counterfeit (28) coin which at the time when he became possessed of it he knew to be counterfeit, fraudulently (25), or with intent that fraud may be committed, delivers the same to any person (11), or attempts to induce any person to receive it, shall be punished with imprisonment of either description (53) for a term which may extend to five years, and shall also be liable to fine. Cog Not bailable. Warrant.

Delivery to another of coin, possessed with the knowledge that it is counterfeit.

This Section is directed against professional utterers.

Do Do *240. Whoever, having any counterfeit (28) coin which is a counterfeit of the Queen's coin (230), and which at the time when he became possessed of it he knew to be a counterfeit of the Queen's coin, fraudulently (25), or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Do Do. Warrant.

Delivery of Queen's coin, possessed with the knowledge that it is counterfeit.

M of D or Sub M, 1st Class *241. Whoever delivers to any other person (11) as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit (28), but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished Do Do. Warrant.

Delivery to another of coin as genuine, which when first possessed the deliverer did not know to be counterfeit.

with imprisonment of either description (53) for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's Rupees to his accomplice B, for the purpose of uttering them. B sells the Rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the Rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the Rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this Section, but B and C are punishable under Section 239 or 240, as the case may be.

Cog. Not bailable. Warrant.

Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

*242. Whoever, fraudulently (25), or with intent that fraud may be committed, is in possession of counterfeit (28) coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and also be liable to fine.

Ct. of S.

Do. Do. Warrant.

Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

*243. Whoever, fraudulently (25), or with intent that fraud may be committed, is in possession of counterfeit (28) coin which is a counterfeit of the Queen's coin (230), having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do.

Where a prisoner on a charge under this Section admitted the possession, but denied fraudulent intention, and the S. J. recorded a plea of guilty, and convicted the accused thereon under Section 362, C. C. P., it was held that the conviction was bad, as the acknowledgment of the prisoner did not extend to an admission of fraud, which was the gist of the offence.—P. 217, Vol. V, Part II, 1864, N. A., N. W. P., Government *vs.* Gokla.

Ct. of S. *244. Whoever, being employed in any mint lawfully established in British India (15), does any act (33), or omits (33) what he is legally bound to do (43), with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Cog. Not bailable, Warrant.

Employé in a mint causing coin to be of a different weight or composition from that fixed by law.

Do. Do. *245. Whoever, without lawful authority, takes out of any mint lawfully established in British India (15), any coining tool or instrument, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Do. Do. Warrant.

Unlawfully taking from a mint any coining instrument.

(a)Dd. Do. *246. Whoever fraudulently (25) or dishonestly (24) performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description (53) for a term Do. Do. Warrant.

Fraudulently or dishonestly diminishing the weight or altering the composition of any coin.

(a) By new Bill, Ct. of S. or M. of D.

which may extend to three years, and shall also be liable to fine.

Explanation. A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

Cog. Not bailable. Warrant.

Fraudulently or dishonestly diminishing the weight or altering the composition of the Queen's coin.

*247. Whoever fraudulently (25) or dishonestly (24) performs on any of the Queen's coin (230) any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Ct. of S.

Do. Do. Warrant.

Altering appearance of any coin with intent that it shall pass as a coin of a different description.

*248. Whoever performs on any coin (230) any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine. Do. Do.(a)

Do. Do. Warrant.

Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.

* 249. Whoever performs on any of the Queen's coin (230) any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Do. Do.

(a) By new Bill, Ct. of S. or M. of D.

248-49. In these Sections the words "fraudulent" and "dishonest" are not included. It is not therefore necessary to prove fraudulent purpose. Alteration and intention to pass such altered coin as coin of a different description is sufficient.

Ct. of S. Cog. Not bailable. Warrant.

Delivery to another of coin possessed with the knowledge that it is altered.

*250. Whoever, having coin in his possession with respect to which the offence defined in Section 246—(Fraudulently diminishing weight or altering composition of any coin) or 248—(Altering appearance of any coin with intent that it shall pass as a coin of different description)—has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently (25), or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description (53) for a term which may extend to five years, and shall also be liable to fine.

Do. Do. Do. Do. Warrant.

Delivery of Queen's coin possessed with the knowledge that it is altered.

*251. Whoever, having coin in his possession with respect to which the offence defined in Section 247—(Fraudulently diminishing weight or altering composition of the Queen's coin) or 249—(Altering appearance of the Queen's coin with intent that it shall pass as a coin of different description)—has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently (25), or with intent that fraud may be committed, delivers such coin to any other person (11), or attempts to induce any other person to receive the same, shall be punished with impri-

sonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

250-51. These Sections are for punishment of traders and deliverers of altered coin.

Cog Not bailable. Warrant.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

*252. Whoever, fraudulently (25), or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 246—(Fraudulently diminishing weight or altering composition of any coin) or 248—(Altering appearance of any coin with intent that it shall pass as a coin of different description)—has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine. Ct of S.

Do Do. Warrant.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

*253. Whoever, fraudulently (25), or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the Sections 247—(Fraudulently diminishing weight or altering composition of the Queen's coin) or 249—(Altering appearance of the Queen's coin with intent that it shall pass as a coin of different description)—has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either Do. Do.

description (53) for a term which may extend to five years, and shall also be liable to fine.

M of or sub 1st Class. Cog Not bailable. Warrant.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

*254. Whoever delivers to any other person (11) as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different, coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in Sections 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

The person punishable by this Section is any one who has altered coin in his possession, and passes or attempts to pass it off to others; but he must be aware that the coin he tries so to pass off is an altered coin, and that it has been altered by one or other of the operations mentioned in preceding Sections of this Code.

Ct of S. Cog Bailable. Warrant.

Counterfeiting a Government stamp.

*255. Whoever counterfeits, (28) or knowingly ly performs any part of the process of counterfeiting, any stamp issued by Government (17) for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence (255) who counterfeits (28) by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Cog. Bailable. Warrant. Ct. of S.

Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.

*256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe (26) that it is intended to be used, for the purpose of counterfeiting (28) any stamp issued by Government (17) for the purpose of revenue, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Making or selling instrument for the purpose of counterfeiting a Government stamp.

*257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe (26) that it is intended to be used, for the purpose of counterfeiting (28) any stamp issued by Government (17) for the purpose of revenue, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Sale of counterfeit Government stamp.

*258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe (26) to be a counterfeit (28) of any stamp issued by Government (17) for the purpose of revenue, shall be punished with imprisonment of either description (53) for a term

which may extend to seven years, and shall also be liable to fine.

Ct. of S. *259. Whoever has in his possession any stamp which he knows to be a counterfeit (28) of any stamp issued by Government (17) for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Cog. Bailable. Warrant.

Having possession of a counterfeit Government stamp.

Do. Do. *260. Whoever uses as genuine any stamp, knowing it to be a counterfeit (28) of any stamp issued by Government (17) for the purpose of revenue, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, or with fine, or with both. Uncog. Bailable. Warrant.

Using as genuine a Government stamp known to be counterfeit.

(a) Do Do. *261. Whoever fraudulently (25), or with intent to cause loss to the Government (17), removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document (29) for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description (53), Do. Do. Warrant.

Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause loss to Government.

(a) By new Bill, Ct of S. of M. of D.

for a term which may extend to three years, or with fine, or with both.

Unoog. Bailable. Warrant.

M of D., or Sub M., 1st Class.

Using a Government stamp known to have been before used.

*262. Whoever fraudulently (25), or with intent to cause loss to the Government (17), uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Do. Do. Warrant.

(a) Ct. of S.

Erasure of mark denoting that stamp has been used.

*263. Whoever fraudulently (25), or with intent to cause loss to Government (17), erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

(a) By new Bill, Ct. of S. or M of D.

CHAPTER XIII.

تیرھوان باب

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

باٹون اور پیمانون کے بیان مین

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked* in this chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death*, or *penal servitude*, or imprisonment for *more than six years*, shall be whipped.

Section 7, Act VI of 1864.

M. of D., or Sub. M., 1st Class. — Uncog. Bailable. Summons.

Fraudulent use of false instrument for weighing

*264. Whoever fraudulently (25) uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Do. Do. — Do Do. Summons.

Fraudulent use of false weight or measure.

*265. Whoever fraudulently (25) uses any false weight or false measure of length or capacity, or fraudulently uses any weight or measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Uncog. Bailable. Summons.

Being in possession of false weights or measures.

*266. Whoever is in possession (27) of any instrument for weighing, or of any weight or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

M of D., or Sub M., 1st Class.

Do. Do. Summons.

Making or selling false weights or measures.

*267. Whoever makes, sells, or disposes of any instrument for weighing, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Do. Do.

CHAPTER XIV.

چودھوان باب

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

امر باعث تکلیف عام

Section 5, Act XI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked* in this chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to

be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death*, or *penal servitude*, or imprisonment for *more than five years*, shall be whipped. Section 7, Act VI of 1864.

There must be an act or illegal omission which causes injury, danger, or annoyance to some class of the public to constitute a public nuisance.

Public nuisance.

امر باعث تکلیف عام

*268. A person (11) is guilty of a public (12) nuisance who does any act (33), or is guilty of an illegal (43) omission (33), which causes any common injury (44), danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

M. of D. or Sub M., 1st Class. — Cog Bailable. Summons.

Negligent act likely to spread infection of any disease dangerous to life.

*269. Whoever unlawfully or negligently does any act (33) which is, and which he knows, or has reason to believe (26) to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine, or with both.

Do. Do. — Do. Do. Summons.

Malignant act likely to spread infection of any disease dangerous to life.

*270. Whoever malignantly does any act (33) which is, and which he knows, or has reason to believe (26) to be, likely to spread the infection of any

disease dangerous to life, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

A having an infectious disease, exposes himself with intent to spread infection. A is guilty under this Section 270.

B exposes A a person with infectious disease on him to excite charity. B is not guilty, malignant intention to spread infection being requisite to make him guilty under Section 270.

Uncog. Bailable. Summons. Any Mag.

Disobedience to a quarantine rule.

*271. Whoever knowingly disobeys any rule made and promulgated by the Government of India (16), or by any Government (17), for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels (48) in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine, or with both.

Do. Do. Summons. M of D, or Sub M, 1st Class.

Adulteration of food or drink which is intended for sale.

*272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

M. of D., or Sub. M., 1st Class. *273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered, or has become noxious, or in a state unfit for food or drink, knowing or having reason to believe (26) that the same is noxious as food or drink, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both. Uncog. Bailable. Summons.

Sale of noxious food or drink.

Do. Do. *274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both. Do. Do. Summons.

Adulteration of drugs.

Do. Do. *275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person (11) not knowing of the adulteration, shall be punished with Do. Do. Summons.

Sale of adulterated drugs.

imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Uncog Bailable. Summons. M of D., or Sub M., 1st Class.

Sale of any drug as a different drug or preparation.

*276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Cog. Bailable. Summons. Any Mag.

Fouling the water of a public spring or reservoir.

*277. Whoever voluntarily (39) corrupts or fouls the water of any public (12) spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Five Hundred Rupees, or with both.

For springs or reservoirs for *public use*, and to determine whether there has been a voluntary fouling, the purpose for which the water of such public spring or reservoir is ordinarily used must be taken into consideration.

Uncog. Bailable. Summons. Do. Do.

Making atmosphere noxious to health.

*278. Whoever voluntarily (39) vitiates the atmosphere in any place, so as to make it noxious to the health of persons (11) in general dwelling, or carrying on business in the neighbourhood, or passing along the

public (12) way, shall be punished with fine which may extend to Five Hundred Rupees.

Any Mag. — Cog Bailable. Summons.

Rash driving or riding on a public way.

*279. Whoever drives any vehicle, or rides, on any public (12) way in a manner so rash or negligent as to endanger human life (45), or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

M. of D., or Sub. M., 1st Class. — Do. Do. Summons.

Rash navigation of a vessel.

*280. Whoever navigates any vessel (48) in a manner so rash or negligent as to endanger human life (45), or to be likely to cause hurt or injury (14) to any other person (11), shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Ct. of S. — Do. Do. Warrant.

Exhibition of a false light, mark, or buoy.

*281. Whoever exhibits any false light, mark, or buoy, intending, or knowing it to be likely, that such exhibition will mislead any navigator, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, or with fine, or with both.

M. of D., or Sub M., 1st Class. — Do. Do. Summons.

Conveying person by water for hire in a vessel overloaded or unsafe.

*282. Whoever knowingly or negligently conveys, or causes to be conveyed, for hire, any person (11) by water in any vessel (48), when that vessel is in such a state, or so loaded, as to endanger the life

of that person, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Cog Bailable. Summons. M of D., or Sub M., 1st Class.

Danger or obstruction in a public way or navigation.

*283. Whoever, by doing any act (40), or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury (14) to any person (11) in any public way or public (12) line of navigation, shall be punished with fine which may extend to Two Hundred Rupees.

Uncog Bailable. Summons. Do. Do.

Negligent conduct with respect to any poisonous substance.

*284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Cog. Bailable. Summons. Any Mag.

Negligent conduct with respect to any fire or combustible matter.

*285. Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life (45), or to be likely to cause hurt or injury (44) to any other person (11), or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to

human life from such fire or combustible matter, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Any Mag. Cog. Bailable. Summons.

Negligent conduct with respect to any explosive substance.

*286. Whoever does, with any explosive substance, any act (33) so rashly or negligently as to endanger human life (45), or to be likely to cause hurt or injury (44) to any other person (11), or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

M of D, or Sub M., 1st Class. Uncog Bailable. Summons.

Negligent conduct with respect to any machinery in the possession or under the charge of the offender.

*287. Whoever does, with any machinery, any act (33) so rashly or negligently as to endanger human life (45), or to be likely to cause hurt or injury (44) to any other person (11), or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both.

Cog. Bailable. Summons.

Negligence with respect to pulling down or repairing buildings.

*288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life (45) from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both. M. of D., or Sub. M., 1st Class.

Do. Do. Summons.

Negligence with respect to any animal.

*289. Whoever knowingly or negligently omits to take such order with any animal (47) in his possession as is sufficient to guard against any probable danger to human life (45), or any probable danger of grievous hurt (320) from such animal, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to One Thousand Rupees, or with both. Any Mag.

Uncog. Bailable. Summons.

Punishment for public nuisance.

*290. Whoever commits a public nuisance (268) in any case not otherwise punishable by this Code, shall be punished with fine which may extend to Two Hundred Rupees. Do. Do.

Cog. Bailable. Summons.

Continuance of nuisance after injunction to discontinue.

*291. Whoever repeats or continues a public nuisance (268), having been enjoined by any public servant (21) who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a M. of D., or Sub. M., 1st Class.

term which may extend to six months, or with fine, or with both.

M. of D., or Sub. M., 1st Class. Cog Bailable. Warrant.

Sale, &c., of obscene books.

*292. Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine, or with both.

Exception.—This Section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any Temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Do. Do. Do. Do. Warrant.

Having in possession obscene book for sale or exhibition.

*293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding Section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine, or with both.

Do. Do. Do. Do. Warrant.

Obscene songs.

*294. Whoever sings, recites, or utters in or near any public place any obscene song, ballad, or words to the annoyance of others, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine, or with both.

CHAPTER XV.

پندرھوان باب

OF OFFENCES RELATING TO RELIGION.

مذھب کے بیان مین

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked* in this chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death*, or *penal servitude*, or imprisonment for *more than five years*, shall be whipped. Section 7, Act VI of 1864.

Cog. Bailable. Summons.

Injuring or defiling a place of worship, with intent to insult the religion of any class.

*295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. M. of D.

Do. Do. Summons.

Disturbing a religious assembly.

*296. Whoever voluntarily (39) causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be pun- Do. Do.

ished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

M. of D. *297. Whoever, with the intention of wounding the feelings of any person (11), or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both. Cog. Bailable. Summons.

Trespassing on burial places, &c.

Do. Do. *298. Whoever, with the deliberate intention of wounding the religious feelings of any person (11) utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both. Uncog. Bailable. Summons.

Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

In framing this clause, we had two objects in view: we wished to allow all fair latitude to religious discussion, at the same time to prevent professors of any religion from offering, under pretext of such discussion, intentional insults to what is held sacred by others. No person is justified in wounding, with deliberate intention, the religious feelings of his neighbours by words, gesture,

or exhibitions. An argument urged by a person, not for purpose of insulting professors of a different creed, but in good faith for vindicating his own, will not fall under definition contained in this clause. Law Commissioners' Report, Note 7, p. 97.

CHAPTER XVI.

سولهوان باب

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences Affecting Life.

جرائم موثر جسم انسان

Section 5, Act VI of 1864, provides for the whipping of Juvenile (Section 83, P. C.) offenders convicted of offences marked * in this chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death*, or *penal servitude*, or imprisonment of *more than five years* shall, be whipped. Section 7, Act VI of 1864.

Culpable homicide.

قتل انسان مستلزم سزا

299. Whoever causes death (44) by doing an act (33) with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Where a degree of violence was used, which ordinarily would

not cause death, but which by rupturing a diseased internal organ did cause death, it was held that the prisoner could not be convicted of culpable homicide, excessive violence not being shown, nor that he had any knowledge of disease referred to. Queen *v.* Punchanun Tantee, 26th May, 1866, p. 77, Vol. I., R. C. C. R.

Reg. *v.* Imam and others. Charge murder. Held that the English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is that when he speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not supported should be acquitted. H. Ct., Bombay, Reports of Cases, p. 57, Vol. III, Part III, dated April 15th, 1867.

Illustrations.

(*a*) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(*b*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence, but A has committed the offence of culpable homicide.

(*c*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is laboring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although, by resorting to proper remedies and skilful treatment, the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide; but it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Murder.

قتل عمد

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act (33) by which the death (46) is caused is done with the intention of causing death, or—

2ndly. If it is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3rdly. If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly. If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

When a Judge convicts on the charge of culpable homicide not amounting to murder, he should record under which of the exceptions in Section 300, P. C ., the case falls. Govt. *v.* Kalika Misser, H. Ct., N. W. P., 23rd July, 1866.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-out or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A without any excuse fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

First. That the provocation is not sought, or voluntarily provoked, by the offender as an excuse for killing or doing harm to any person.

Secondly. That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. That the provocation is not given by anything done in lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

Illustrations.

(*a*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A on this provocation fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his power.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Causing such bodily injury as a prisoner knew to have been likely to have caused death is murder, the want of *intention* to cause death does not reduce culpable homicide to culpable homicide not amounting to murder. Queen *v.* Pooshoo, 14th Decr, 1865, R. C. C R, p. 7., Vol. I.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

Culpable homicide by causing the death of a person other than the person whose death was intended.

301. If a person (11), by doing anything which he intends or knows to be likely to cause death (46), commits culpable homicide (299) by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Ct. of S. 302. Whoever commits murder shall be punished with death or transportation for life (53), and shall also be liable to fine.

Punishment for murder.

Cog. Not bailable. Warrant.

Do. Do. 303. Whoever being under sentence of transportation for life, commits murder (300), shall be punished with death.

Punishment for murder by a life convict.

Do. Do. Warrant.

Do. Do. *304. Whoever commits culpable homicide (299) not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to a fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury (11) as is likely to cause death (46).

Punishment for culpable homicide not amounting to murder.

Do. Do. Warrant.

Vide note on Section 300, *in re* Government *v.* Kalika Misser. *Vide* note on Section 320.

Hanging a man, life not being extinct, to a tree, after he has been knocked down by a blow from *one* of the party, would render *all* liable to a conviction for culpable homicide amounting to murder. If life were extinct before the hanging, the striker would be liable to indictment under Section 304 or 325, P. C., and the prisoners who assisted in the hanging, under Sections 201 and 203, P. C.—P. 45, Vol. II, R. C C. R., 20th August, 1866.

Cog. Not bailable. Warrant.

Abetment of suicide of child or insane person.

305. If any person (11) under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets (107) the commission of such suicide shall be punished with death (53) or transportation for life (53), or imprisonment for a term not exceeding ten years, and shall also be liable to fine. Ct. of S.

Do. Do. Warrant.

Abetment of suicide.

*306. If any person (11) commits suicide, whoever abets (107) the commission of such suicide shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Do. Do.

Do. Do. Warrant.

Attempt of murder.

*307. Whoever does any act (33) with such intention or knowledge, and under such circumstances, that if he by that act caused death (46) he would be guilty of murder (300), shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine; and if hurt (319) is caused to any person (11) by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned. Do. Do.

In order to constitute the offence of attempt to murder under this Section 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under Section 511, I. P. C., taken in connection with Sections 299 and 300. Therefore, when the prisoner presented an uncapped gun at E. G. (believing the gun

to be capped, with the intention of murdering him, but was prevented from pulling the trigger:—*Held*, that he could not be convicted of an attempt to murder upon a charge framed under Section 307 of the P. C.; but that under the same circumstances he might be convicted upon a charge of simple attempt to murder framed under Section 511 in connection with Sections 299 and 300. That a charge may be framed under Section 511, coupled with Section 299, is shown from Section 10, Act XVIII. of 1862. Section 307 is not exhaustive. An act may amount to an attempt to murder, under Section 511, coupled with Section 299, which does not satisfy all the requirements of Section 307.

[*Couch, C. J.*—It may be said that the nature of the murder attempted is here defined; and the prisoner is charged with attempt to commit that murder.]

[*Westropp J.*—Believed it to be consistent with common sense that the act herein related was an act sufficiently approximate to the commission of the offence to bring it within Section 511, and that Section 307 was not intended to exhaust all attempts to commit murder which should be punishable under the Code.]

Bombay H. Ct. Reports, Vol. IV, Part I, 1868, pp. 17-25. Criminal, Crown Cases.

Illustrations.

(*a*). A shoots at Z with intention to kill him, under such circumstances that if death ensued, A would be guilty of murder. A is liable to punishment under this Section.

(*b*). A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this Section, though the death of the child does not ensue.

(*c*). A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this Section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this Section.

(*d*). A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping. A

has not yet committed the offence defined in this Section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this Section.

Cog. Bailable. Warrant.

Attempt to commit culpable homicide.

*308. Whoever does any act (33) with such intention or knowledge, and under such circumstances, that if he by that act caused death (46) he would be guilty of culpable homicide (299) not amounting to murder, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both; and if hurt (319) is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Ct. of S. Do. Do. Do. Do.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this Section.

Do. Do. Warrant.

Attempt to commit suicide.

ضرر کشي کا اقدام

*309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, and shall also be liable to fine. M. of D.

Attempts to commit suicide are of three classes. 1*st*, persons who are driven to attempt suicide by real intense suffering, either mental or bodily. Every instance of this kind should be treated according to its peculiar features. 2*nd*, where suicide is attempted in a moment of passion, with little or no reflection, and no very definite motive. Punishment, though perhaps not severe punish-

ment, should be inflicted. In the 3rd class, *viz.*, the class of suicide which partakes of the nature of Dhurna, emphatic punishment is almost always necessary.—P. 183, Cir. 164, October 27th, 1860. Mr. Campbell's Circulars, J. C., O.

Thug.
ٹھگ

310. Whoever at any time after the passing of this Act (XLV. of 1860) shall have been habitually associated with any other or others for the purpose of committing robbery (390) or child-stealing, by means of or accompanied with murder (300), is a Thug.

Ct. of S. *311. Whoever is a Thug (310) shall be punished with transportation for life, and shall also be liable to fine. Cog. Not bailable. Warrant.

Punishment.

Information to be given regarding thugs, dacoits, robbers, and receivers of stolen property compulsory by Regulation VI., 1810, Section 2; Regulation I., 1811, Section 10; Regulation XX., 1817, Section 33. Omitting to give such information punishable under Sections 176-177, P. C.

Of the Causing of Miscarriage, of Injuries of Unborn Children, of the Exposure of Infants, and of the Concealment of Births.

Do. Do. *312. Whoever voluntarily (39) causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith (52) for the purpose of saving the life of the woman, be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Uncog. Bailable. Warrant.

Causing miscarriage.
اسقاط حمل

Explanation. A woman who causes herself to miscarry is within the meaning of this Section.

A causes a woman to miscarry in good faith, with or without her consent, for the purpose of saving her life. A commits no offence under this Section.

If A had her consent, he comes under the general exception contained in Section 88, P. C.

Uncog. Not bailable. Warrant.

Causing miscarriage without woman's consent.

*313. Whoever commits the offence defined in the last preceding Section without the consent of the woman, whether the woman is quick with child or not shall be punished with transportation for life (53), or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Ct. of S.

Do. Do. Warrant.

Death caused by an act done with intent to cause miscarriage.

If act done without woman's consent.

*314. Whoever, with intent to cause the miscarriage of a woman with child, does any act (33) which causes the death (46) of such woman, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above-mentioned. Do. Do.

Explanation. It is not essential to this offence that the offender should know that the act (33) is likely to cause death (46).

Ct. of S. *315. Whoever before the birth of any child does any act (33) with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith (52) for the purpose of saving the life of the mother, be punished with imprisonment of either description (53) for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent a child being born alive, or to cause it to die after birth.

Uncog. Not bailable. Warrant.

Do. Do. *316. Whoever does any act (33) under such circumstances that if he thereby caused death (46) he would be guilty of culpable homicide (299), and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Causing death of a quick unborn child by an act amounting to culpable homicide.

Do. Do. Warrant.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this Section.

Do. Do. *317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be pun-

Exposure and abandonment of a child under twelve years by parent, or person having care of it.

Cog. Bailable. Warrant.

ished with imprisonment of either description (53) for a term which may extend to seven years, or with fine, or with both.

Explanation. This Section is not intended to prevent the trial of the offender for murder (300) or culpable homicide (299), as the case may be, if the child die in consequence of the exposure.

Cog. Bailable. Warrant.

Concealment of birth by secret disposal of dead body.

*318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. (a) Ct. of S.

It often happens that the dead body of a new-born infant is found under very suspicious circumstances, but it cannot be proved that it was born alive or murdered. This Section deals with such cases.—P. 85, Mr. Campbell's Circulars, J. C., O.

Of Hurt.

Hurt.

خود

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

At page 106 the Law Commissioners say.—" A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly serious. A push, which to a man in health is a trifle, may, if it happens to be directed against a diseased part of an infirm person, occasion consequences which the offender never contemplated as possible. A blow designed to inflict only the pain of a moment may cause the person struck to lose his footing, to fall from a considerable height, and to break a limb. In such cases, to punish the

(a) By new Bill, Ct. of S. or M. of D.

assailant with five years of strict imprisonment would be in the highest degree unjust and cruel. It is said, and we can easily believe it, that in such cases the French juries have frequently refused, in spite of the clearest evidence, to pronounce a decision which would have subjected the accused to a punishment so obviously disproportioned to his offence.

"We have attempted to preserve and to extend what is good in this article of the French Code, and to avoid the evils which we have noticed. It appears to us that the length of time during which a sufferer is in pain, diseased, or incapacitated from pursuing his ordinary avocations, though a defective criterion of the severity of a hurt, is still the best criterion that has ever been devised. It is a criterion which may, we think, with propriety be employed, not merely in cases where violence has been used, but in cases where hurt has been caused without any assault, as by the administration of drugs, the setting of traps, the digging of pitfalls, the placing of ropes across a road. But though we have borrowed from the French Code this test of the severity of bodily injuries, we have framed our penal provisions on a principle quite different from that by which the authors of the French Code appear to have been guided. In apportioning the punishment, we take into consideration both the extent of the hurt and the intention of the offender.

"Where bodily hurt is voluntarily inflicted in an attempt to murder the person hurt, we propose to punish the offender with transportation for life, or with imprisonment for a term which may extend to life, and cannot be less than seven years. It does not appear to us that, where the murderous intention is made out, the severity of the hurt inflicted is a circumstance which ought to be considered in apportioning the punishment. It is undoubtedly a circumstance which will be important as evidence. A Court will generally be more easily satisfied of the murderous intention of an assailant who has fractured a man's skull, than of one who has only caused a slight contusion. But the proof might be complete. To take examples which are universally known:—Harley was laid up more than twenty days by the wound which he received from Guiscard; the scratch which Damien gave to Louis the Fifteenth was so slight that it was

followed by no feverish symptoms. Yet it will be allowed that it would be absurd to make a distinction between the two assassins on this ground.

"We propose that when bodily hurt is inflicted by way of torture, the punishment shall be very severe. In England, happily, such a provision would be unnecessary. But the execrable cruelties which are committed by robbers in this country for the purpose of extorting property, or information relating to property, render it absolutely necessary here. We propose that in such cases, if the hurt inflicted be what we have designated as *grievous*, the offender shall be punished with transportation for life, or with imprisonment for a term which may extend to life, and which shall not be less than seven years. Where the hurt is not grievous, we propose that the imprisonment shall be for a term of not more than fourteen years, nor less than one year."

Grievous hurt.
ضرر شديد

320. The following kinds of hurt (319) only are designated as "grievous:"—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

A man who being first struck, strikes his assailant in the mere heat of passion and causes his death, commits "*grievous hurt*," not culpable homicide.—Vol. I., p. 125, R. J. P. J.

A conviction by a Magistrate for hurt does not prevent a Judge ordering the commitment for culpable homicide of a person so convicted.—Letter No. 1062, 1863, Vol. I., p. 287, R. J. P. J.

Voluntarily causing hurt.

321. Whoever does any act (33) with the intention of thereby causing hurt (319) to any person (11), or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt (321), if the hurt (319) which he intends to cause, or knows himself to be likely to cause, is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation. A person is not said voluntarily to cause grievous hurt (322) except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily (39) to cause grievous hurt, if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Uncog. Bailable Summons.

Any Mag

Punishment for voluntarily causing hurt.

*323. Whoever, except in the case provided for by Section 334,—[on provocation]—voluntarily causes hurt (321), shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine which may extend to One Thousand Rupees, or with both.

If this Section be referred to in the charge made out under Chapter XIII, C. C. P., as the Section under which the offender charged is punishable, the existence of the exception here mentioned should be *distinctly* denied in the body of the charge. —*Vide* Section 237, C. C. P., and Circular dated 11th March, 1863, H. Ct, Calcutta.

Offences under this Section cannot be treated under Chapter XV, but under Chapter XIV, C. P. C.—P. 109, Vol. V., Part II, N. A., N. W. P., 1865.

Cog. Bailable. Summons.

Ct. of S. or M of D, or Sub M., 1st Class.

Voluntarily causing hurt by dangerous weapons or means.

*324. Whoever, except in the case provided for by Section 334,—[on provocation]—voluntarily causes hurt (321) by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any corrosive substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into

the blood, or by means of any animal, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

If this Section be referred to in the charge made out under Chapter XIII, C. C. P., as the Section under which the offender charged is punishable, the existence of the exception here mentioned should be *distinctly* denied in the body of the charge. —*Vide* Section 237, C. C. P., and Circular dated 11th March, 1863, H. Ct., Calcutta.

(a) Any Mag. Cog. Bailable. Summons.

Punishment for voluntarily causing grievous hurt.

*325. Whoever, except in the case provided for by Section 335,—[on provocation]—voluntarily causes grievous hurt (322), shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

If this Section be referred to in the charge made out under Chapter XIII, C. C. P., as the Section under which the offender charged is punishable, the existence of the exception here mentioned should be *distinctly* denied in the body of the charge. —*Vide* Section 237, C. C. P., and Circular dated 11th March, 1863, H. Ct., Calcutta.

Ct. of S. Cog. Not bailable. Summons.

Voluntarily causing grievous hurt by dangerous weapons or means.

*326. Whoever, except in the case provided for by Section 335,—[on provocation]—voluntarily causes grievous hurt (322) by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence (40), is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or

(a) * By new Bill, Ct. of S. or M of D., or Sub. M., 1st Class.

by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

If this Section be referred to in the charge made out under Chapter XIII, C. C. P., as the Section under which the offender charged is punishable, the existence of the exception here mentioned should be *distinctly* denied in the body of the charge. —*Vide* Section 237, C. C. P., and Circular dated 11th March, 1863, H. Ct., Calcutta.

Cog. Not bailable. Warrant.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

*327. Whoever voluntarily causes hurt (321) for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security (30), or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence (40) (Act IV, 1867), shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Ct. of S.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Do. Do. Warrant.

Causing hurt by means of poison, &c., with intent to commit an offence.

*328. Whoever administers to, or causes to be taken by any person (11), any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt (319) to such person, or with intent to commit or Do. Do.

to facilitate the commission of an offence (40) (Act IV, 1867), or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Ct. of S. *329. Whoever voluntarily causes grievous hurt (322) for the purpose of extorting from the sufferer, or from any person (11) interested in the sufferer, any property or valuable security (30), or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence (40) (Act IV, 1867), shall be punished with transportation for life (53), or imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Cog. Not bailable. Warrant.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Do. Do. *330. Whoever voluntarily causes hurt (321) for the purpose of extorting from the sufferer, or from any person (11) interested in the sufferer, any confession or any information which may lead to the detection of an offence (40) (Act IV, 1867) or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or Cog. Bailable. Warrant.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security (30), shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867.

Illustrations.

(*a.*) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this Section.

(*b.*) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this Section.

(*c.*) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this Section.

(*d.*) A, a zemindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this Section.

Cog. Not bailable. Warrant. Ct. of S.

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.

*331. Whoever voluntarily causes grievous hurt (322) for the purpose of extorting from the sufferer, or from any person (11) interested in the sufferer, any confession or any information which may lead to the detection of an offence (40) (Act IV, 1867) or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security (30), or to

satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867

The preceding Section and this Section provide for the punishment of persons causing hurt in order to obtain confessions. The law regarding evidence applicable to confessions will be found in Sections 98, 146, 147, 148, 149, 150, 202, 203, 204, 205, and 366, Code of Criminal Procedure, Act XXV of 1861, and an able treatment of the subject in Field's Law of Evidence, pp. 220, 236.

(a) Ct. of S. *332. Whoever voluntarily causes hurt (321) to any person (11) being a public servant (21) in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both. Cog. Bailable. Warrant.

Voluntarily causing hurt to deter public servant from his duty.

Do. Do. *333. Whoever voluntarily causes grievous hurt (322) to any person (11) being a public servant (21) in the discharge of his duty as such public servant, or with intent to prevent or deter that person or Cog. Not bailable. Warrant.

Voluntarily causing grievous hurt to deter a public servant from his duty.

(a) By new Bill, Ct. of S. or M. of D.

any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Cog. Bailable. Summons. Any Mag.

Voluntarily causing hurt on provocation.

*334. Whoever voluntarily causes hurt (321) on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person (11) other than the person who gave the provocation, shall be punished with imprisonment of either description (53) for a term which may extend to one month, or with fine which may extend to Five Hundred Rupees, or with both.

Do. Do. Summons. Ct. of S. or M. of D.

Causing grievous hurt on provocation.

*335. Whoever causes grievous hurt on grave (320) and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person (11) other than the person who gave the provocation, shall be punished with imprisonment of either description (53) for a term which may extend to four years, or with fine which may extend to Two Thousand Rupees, or with both.

Explanation. The last two Sections are subject to the same provisoes as Exception 1, Section 300.

Do. Do. Summons. Any Mag.

Punishment for act which endangers life or the personal safety of others.

*336. Whoever does any act (33) so rashly or negligently as to endanger human life (45) or the personal safety of others, shall be punished with im-

prisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Two Hundred and Fifty Rupees, or with both.

M. of D. or Sub. M., 1st Class. — Cog. Bailable. Summons.

Causing hurt by an act which endangers life or the personal safety of others.

*337. Whoever causes hurt (319) to any person (11) by doing any act (33) rashly or negligently as to endanger human life (45), or the personal safety of others, shall be punished with imprisonment of either description (53) for a term which may extend to six months, or with fine which may extend to Five Hundred Rupees, or with both.

Do. Do. — Do. Do. Summons.

Causing grievous hurt by an act which endangers life or the personal safety of others.

*338. Whoever causes grievous hurt (320) to any person (11) by doing any act (33) so rashly or negligently as to endanger human life (45), or the personal safety of others, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine which may extend to One Thousand Rupees, or with both.

Wrongful Restraint and Wrongful Confinement.

Wrongful restraint.

مزاحمت بیجا

339. Whoever voluntarily (39) obstructs any person (11) so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

By wrongful restraint is meant the keeping a man out of a place where he wishes to be, and has a right to be. Wrongful confinement, which is a form of wrongful restraint, is the keeping

of a man within limits out of which he wishes to go, and has a right to go. The offence of wrongful restraint, when it does not amount to wrongful confinement, and when it is not accompanied with violence or the causing of bodily hurt, is seldom a serious offence, and therefore to be visited with a light punishment. —Law Commissioners' Report, Note M., p. 107.

Exception. The obstruction of a private way over land or water, which a person (11) in good faith (52) believes himself to have a lawful right to obstruct, is not an offence (40) within the meaning of this Section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Wrongful confinement.

*340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

By Article 10, Schedule B, Act XXVI of 1867, all petitions and applications, when presented to any Criminal Court, regarding offences defined in this and the preceding Section, or any offence uncognizable by the Police as specified in column 3 of the Schedule annexed to the Code of Criminal Procedure, had to be presented on a one rupee stamp paper. By Financial Department No. 1120, dated 20th February, 1868, under the provisions of Section 2, Act XVIII of 1865, the Governor-General in Council sanctioned the exemption from stamp duty of petitions and applications above named, when such were presented to any Criminal Court by Government officers in their public capacity.

A, a Police Officer, while investigating a case, is wrongfully confined. By Article 10, Schedule B, Act XXVI of 1867, he would have had to present his petition of complaint on a one rupee

stamp. By Notification No. 1120, he is exempted from stamp duty.

The offence of wrongful confinement may be a slight offence, but when attended by aggravating circumstances it may be one of the most serious that can be committed. One aggravating circumstance is the duration of confinement, another aggravating circumstance is the circumstance that the offender persists in wrongfully confining a person, notwithstanding an order issued by a competent authority for the liberation or production of that person; a third aggravating circumstance is the circumstance that the offender uses criminal confinement for purposes of extortion. For all these aggravated forms of wrongful confinement severe punishments are provided.—Law Commissioners' Report, Note M., p. 107.

Illustrations.

(*a.*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Any Mag. | Cog. Bailable. Summons.

Punishment for wrongful restraint.

*341. Whoever wrongfully restrains (339) any person (11) shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Five Hundred Rupees, or with both.

M. of D. or Sub. M., 1st Class. | Do. Do. Summons.

Punishment for wrongful confinement.

*342. Whoever wrongfully confines (340) any person (11) shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine which may extend to One Thousand Rupees, or with both.

A short duration of confinement may be so harmless as not

to amount to an offence; in such cases Chapter IV, Section 95, should be taken into consideration. The Law Commissioners say the Section is intended to provide for those cases which, though, from the imperfections of language, they fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent.

Cog. Bailable. Summons. M. of D. or Sub. M., 1st Class.

Wrongful confinement for three or more days.

*343. Whoever wrongfully confines (340) any person (11) for three days or more shall be punished with imprisonment of either description (53) for a term which may extend two tw years, or with fine, or with both.

Do. Do. Summons. Ct of S. or M of D.

Wrongful confinement for ten or more days

*344. Whoever wrongfully confines (340) any person (11) for ten days or more shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine.

Uncog. Bailable. Summons. (a) Ct. of S.

Wrongful confinement of person for whose liberation a writ has been issued.

*345. Whoever keeps any person (11) in wrongful confinement (340), knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other Section (50) of this Code.

Cog. Bailable. Summons. Do. Do.

Wrongful confinement in secret

*346. Whoever wrongfully confines (340) any person (11) in such manner as to indicate an intention that the confinement of such person may not be known to any

(a) By new Bill, Ct. of S. or M. of D.

person interested in the person so confined, or to any public servant (21), or that the place of such confinement may not be known to, or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description (53) for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Ct. of S. or M. of D

Cog. Bailable. Summons.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

*347. Whoever wrongfully confines (340) any person (11) for the purpose of extorting from the person confined or from any person interested in the person confined, any property or valuable security (30), or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence (40) (Act IV, 1867), shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined.—Act IV. of 1867.

Do. Do

Do. Do. Summons.

Wrongful confinement for the purpose of extorting confession, or of compelling restoration of property.

*348. Whoever wrongfully confines (340) any person (11) for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence (40) (Act IV, 1867) or misconduct, or for the

purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of any property or valuable security (30), or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined.—Act IV. of 1867.

Of Criminal Force and Assault

Force.

جبر

349. A person (11) is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided, that the person causing the motion, or change of motion or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change, or cessation of

motion, takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

جبر مجرمانا

350. Whoever intentionally uses force (349) to any person (11) without that person's consent, in order to the committing of any offence (40), or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury (44), fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

The Law Commissioners refer to the definition herein given as follows:—"We have found great difficulty in giving a definition, and are by no means satisfied with that which we now offer. As, however, it at present appears to us to include all that we mean to include, and to exclude all that we mean to exclude, we have adopted it in spite of the objections which we feel to its harsh and quaint phraseology. We have adopted it with the less scruple, because we trust that the Illustrations will render every part of it intelligible to an attentive reader." The term herein defined in this Section 350 includes what is termed by English law "battery."

Illustrations.

(*a.*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will

cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion, A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has committed criminal force to Z.

(*c*.) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z; and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produced the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily

power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must effect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h.*) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person (11) present to apprehend that he who makes that gesture or preparation is about to use criminal force (350) to that person, is said to commit an assault.

By English law, an action of trespass lies, and an indictment may be laid as well as an action brought for assault; but if after a summary conviction before two Magistrates, the offender who has been convicted pay full amount of fine and costs, or undergo imprisonment, or obtain a certificate dismissing the complaint, he is released from further proceedings, civil and criminal, go in the same cause.

It has been ruled by High Court, Calcutta, that compounding an assault for money consideration under a bond is admissible, and an action legally to enforce the contract is maintainable.

If a person who has reason to believe he will be attacked, courts. the attack, he will not be acquitted, on the plea that he acted in self-defence —Vol II, p. 118, R J. P. J

Explanation. Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning

as may make those gestures or preparations amount to an assault.

Illustrations.

(*a.*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b.*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c.*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Uncog. Bailable. Summons. Any Mag.

Punishment for using criminal force otherwise than on grave provocation.

*352. Whoever assaults (351) or uses criminal force (350) to any person (11) otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Five Hundred Rupees, or with both.

Compounding a private misdeameanour, such as an assault, for money consideration under a bond is admissible, and an action legally to enforce the contract is maintainable.—Moothoora Nath Dey *vs.* Gopal Roy, &c., 9th March, 1866. Vol. I., p. 19, R. C. C. R.

Explanation. Grave and sudden provocation will not mitigate the punishment for an offence (40) under this Section, if the provocation is sought

or voluntarily (39) provoked by the offender as an excuse for the offence; or

If the provocation is given by anything done in obedience to the law, or a public servant (21) in the lawful exercise of the powers of such public servant; or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

M. D. or Sub. M., 1st Class. — Cog. Bailable. Warrant.

Using criminal force to deter a public servant from discharge of his duty.

*353. Whoever assaults (351) or uses criminal force (350) to any person (11) being a public servant (21) in the execution of his duty as such public servant, or with intend to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Do. Do. — Do. Do. Warrant.

Assault or use of criminal force to a woman with intent to outrage her modesty.

*354. Whoever assaults (351) or uses criminal force (350) to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Whoever having been *previously* convicted of the offence spe-

cified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, H. C, Calcutta, dated 8th April, 1864.

Uncog Bailable. Summons.

Assault or criminal force with intent to dishonor a person, otherwise than on grave provocation.

*355. Whoever assaults (351) or uses criminal force (350) to any person (11), intending thereby to dishonor that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. M of D. or Sub M., 1st Class.

Cog. Not bailable. Warrant.

Assault or criminal force in attempt to commit theft of property carried by a person.

*356. Whoever assaults (351) or uses criminal force (350) to any person (11), in attempting to commit theft (378) on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. Any Mag.

Cog. Bailable. Warrant.

Assault or criminal force in attempt wrongfully to confine person.

*357. Whoever assaults (351) or uses criminal force (350) to any person (11), in attempting wrongfully to confine that person (340), shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine which may extend to One Thousand Rupees, or with both. Do. Do.

Any Mag. Uncog. Bailable. Summons.

Assaulting or using criminal force on grave provocation.

*358. Whoever assaults (351) or uses criminal force (350) to any person (11) on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Two Hundred Rupees, or with both.

Explanation. The last Section is subject to the same explanation as Section 352.

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOR.

Kidnapping.

انسان کو لی
بھا گنا

359. Kidnapping is of two kinds; kidnapping from British India (15), and kidnapping from lawful guardianship.

* This offence may be committed on a child by removing that child out of the keeping of its lawful guardian or guardians. On a grown man it can only be committed beyond the limits of the Company's (*Queen's*) territories, or by receiving him on board a ship for that purpose. The enticing a grown up person by false promises to go from one place in Company's (*Queen's*) territories to another place also within those territories may be subject for Civil action, and under certain circumstances for a criminal prosecution, but it does not come under the head of kidnapping.—Law Commissioners' Report, Note M, p. 108.

Kidnapping from British India.

برٹش انڈیا
سے باہر لے
بھا گنا

360. Whoever conveys any person (11) beyond the limits of British India (15) without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from lawful guardianship.

حفاظت یا خبرگیری لے بھاگنا

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person (11) of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Charge of kidnapping from lawful guardianship cannot be sustained in case of a runaway, enticed after a voluntary abandonment of her home to emigrate. P. 152, Vol. V., R. J.P. J.

Charge of kidnapping from lawful guardianship sustainable even when the child has been betrothed to the offender.—*Vide* Queen *vs.* Gooroodas Rajbunsee.—Vol. V., p. 149, R. J. P. J.

Charge of kidnapping from lawful guardianship should contain the name of the guardian.—Para. 3, Letter No. 154, 20th February, 1866. P. 16, Vol. I., R. C. C. R.

Explanation. The words "lawful guardian" in this Section include any person lawfully entrusted with the care or custody of such minor or other person (11).

Exception. This Section does not extend to the act (33) of any person (11) who in good faith (52) believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force (349) compels, or by any deceitful means induces, any person (11) to go from any place, is said to abduct that person.

Ct. of S.

Cog. Not bailable. Warrant.

Punishment for kidnapping.

*363. Whoever "kidnaps any person from British India" (360) or from lawful guardianship (361), shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do.

Do. Do. Warrant.

Kidnapping or abducting in order to murder.

*364. Whoever kidnaps (359) or abducts (362) any person (11) in order that such person may be murdered (300), or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a.*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this Section.

(*b.*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this Section.

Do. Do.

Do. Do. Warrant.

Kidnapping or abducting with intent secretly and wrongfully to confine a person.

*365. Whoever kidnaps (359) or abducts (362) any person (11) with intent to cause that person to be secretly and wrongfully confined (340), shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Cog. Not bailable. Warrant. Ct. of S.

Kidnapping or abducting a woman to compel her marriage, &c.

*366. Whoever kidnaps (359) or abducts (362) any woman (10) with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person (11) against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.

*367. Whoever kidnaps (359) or abducts (362) any person (11) in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt (320), or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Wrongfully concealing or keeping in confinement a kidnapped person.

*368. Whoever, knowing that any person (11) has been kidnapped (359) or has been abducted (362), wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

Ct. of S. *369. Whoever kidnaps (359) or abducts (362) any child under the age of ten years with the intention of taking dishonestly (24) any moveable property from the person of such child, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting child under ten years with intent to steal moveable property from the person of such child.

Cog Not bailable. Warrant.

Do. Do. *370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

Uncog. Bailable. Warrant.

A bought a girl from B, her mother, a Chamarin, and gave her to C, a Thakoor, for marriage to his son, in consideration of the sum of ten Rupees, A having represented to C that the girl was a Thakoorain. A and B were both convicted of selling the child as a slave under Section 370, P. C. It was held that this conviction was right in respect to B, who had sold the child to A, unreservedly; but that it was wrong with regard to A, because the Asara form of marriage, the characteristic of which, according to Strange, is the payment of money by the bridegroom to those who gave the bride away, is acknowledged among Hindoos. To give a girl away in marriage, therefore, under such circumstances, is not equivalent to selling her as a slave. It was pointed out, however, that A, in having represented to C that the child of the Chamarin was a Thakoorain, was guilty of cheating, and the punishment which had been awarded to him for selling the child as a slave was allowed to stand, this charge only being altered from Section 370 to 417 of the Code.—Book Circular No $\frac{x}{25}$ of 1865, J. C., O.

Cog Not bailable. Warrant. — Ct. of S.

Habitual dealing in slaves.

*371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description (53) for a term not exceeding ten years, and shall also be liable to fine.

Do Do. Warrant. — Do. Do.

Selling of any minor for purposes of prostitution, &c.

*372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment (53) of either description for a term which may extend to ten years, and shall also be liable to fine.

Do. Do. Warrant. — Do. Do.

Buying of any minor for purposes of prostitution.

*373. Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Held that the tribunal to try an offence under Section 373, C P., the charge being the *act* of "purchase or acquisition of the minor for an immoral purpose," was the Court having jurisdiction in the place in which the purchase or acquisition was

made, and not the Court having jurisdiction in the place of subsequent retention in another district.—Govt. *vs.* Begum, *alias* Elahee Jan, &c., June 14, 1866. N. A., N. W. P., p. 131, Vol. VI, Part II.

Any Mag. Cog. Bailable. Warrant.

Unlawful compulsory labor.

*374. Whoever unlawfully compels any person to labor against the will of that person (11), shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Of Rape.

Rape.

زنا بجبر

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First. Against her will. While she is in possession of her senses.

Secondly. Without her consent (90). When drugged or otherwise unable to give her consent.

Thirdly. With her consent (90), when her consent has been obtained by putting her in fear of death (46) or of hurt (319).

Fourthly. With her consent (90), when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With or without her consent, when she is under ten years of age. So young that consent is immaterial.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be again convicted of the *same* offence, may be punished with whipping, in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, pp. 249, 250.

A was convicted by District Officer of rape on a married girl, who had not yet cohabited with her husband. On appeal, Commissioner found that the girl was a consenting party, and therefore acquitted the prisoner of rape, but convicted him of adultery, and sentenced him accordingly. On the case coming before J. C., the Commissioner's judgment was reversed for following reasons:—

1*st.* Because on a trial for rape the accused cannot be convicted of adultery.—*Vide* Mosley's Digest of Indian Cases, Vol. I, p. 123.

2*ndly.* Because the charge was not instituted by the girl's husband.—*Vide* Section 177, C. C. P.

It was in the power of her husband to charge the prisoner with the commission of adultery.—J. C., O., Cir. No. 82, 1864.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

Cog. Not bailable. Warrant. Ct. of S.

Punishment for rape.

*376. Whoever commits rape (375) shall be punished with transportation for life, or with imprisonment of either description (53) for a term which

may extend to ten years, and shall also be liable to fine.

Of Unnatural Offences.

Ct. of S. *377. Whoever voluntarily (39) has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Cog Not bailable Warrant.

Unnatural offences.

جرائم خلاف وضع فطري

Whoever, having been *previously* convicted of the offence specified in this Section, shall be again convicted of the *same* offence, may be punished with whipping, in *addition* to any other punishment to which he may be liable under the P C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, pp. 249, 250.

Explanation. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.

CHAPTER XVII.

سترهوان باب

OFFENCES AGAINST PROPERTY, OR THEFT.

سرقه کا بیان

Section 5, Act VI. of 1864, provides for the whipping of juvenile (Section 83, P. C) offenders convicted of offences specified

in the Sections marked* in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April 1864). No *female*, or any person sentenced to *death* or *penal servitude*, or imprisonment for *more than five years*, shall be whipped.—Section 7, Act VI. of 1864.

All the violations of the rights of property which we propose to make punishable by this Chapter fall under one or more of the following heads:—

1. Theft.
2. Extortion.
3. Robbery.
4. The criminal misappropriation of property not in possession.
5. Criminal breach of trust.
6. The receiving of stolen property.
7. Cheating.
8. Fraudulent bankruptcy.
9. Mischief.
10. Criminal trespass.

All these offences resemble each other in this, that they cause, or have some tendency, directly or indirectly, to cause some party not to have such a dominion over property as that party is entitled by law to have.

The first great line which divides these offences may be easily traced. Some of them merely prevent or disturb the enjoyment of property by one who has a right to it. Others transfer property to one who has no right to it. Some merely cause injury to the sufferer. Others, by means of wrongful loss to the sufferer, cause wrongful gain to some other party. The latter class of offences are designated in this Code as fraudulent. (*See* clause 16.) Every offence against property may be fraudulently committed; but theft, extortion, robbery, the criminal misappro-

priation of property not in possession, criminal breach of trust, the receiving of stolen property, fraudulent bankruptcy, and cheating *must* be in all cases fraudulently committed. Fraud enters into the definition of every one of these offences; but fraud does not enter into the definition of mischief or criminal trespass.—Law Commissioners' Report, Note N., p. 110.

Theft.

چوري یا سرقه

378. Whoever, intending to take dishonestly (24) any moveable property (22) out of the possession (27) of any person (11) without that person's consent (90), moves that property in order to such taking, is said to commit theft.

Larceny or theft has been defined by English law to be "the felonious taking (*animo furandi*) the property of another without his consent, and against his will, with intent to convert it to the use of the taker." For definition of felonious taking, see note on Section 390, P. C. The ingredients of larceny are (1) *felonious taking* (2) *without consent and against will of owner;* (3) *taker's intent to convert property to his own use.* The P. C. definition of theft is given in Section 378. The ingredients are (1) *intention to take dishonestly* (2) *moveable property* (3) *without consent of owner.* "Dishonest taking" is when there is intention to cause either wrongful loss of property to owner, or wrongful gain of property to another person. Moveable property only can be subject of theft. "Moveable property" includes corporal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth The thing stolen must be a subject of property. Larceny at Common Law cannot be committed of things not the subject of property, nor of animals, *feræ naturæ* "Taking without consent of owner" may be otherwise than by forcible seizure, as where A, with intent to steal, induces B, by an artful trick, to part temporarily with his goods, B having no intention to divest himself of the ownership of said property. Here A's intention was dishonest, and he took B's moveable property out of B's possession without B's consent. "The taking should be

not only wrongful and fraudulent, but should also be without any color of right." (*Parke*). "If there be any fair claim of property or right in the prisoner, or if it be brought into doubt at all, the Court will direct an acquittal." (*East, Pleas of the Crown*) Too great caution cannot be exercised in cases in which there is room for doubting the criminal intent before any one is subjected to the pain and ignominy of a prosecution In regard to the *dishonest intent* of the prisoner at the time he takes the moveable property, there must be no reasonable doubt.

A forcible seizure of the bullocks of A for something that A's husband in his lifetime may have owed would be causing wrongful loss to A, and a conviction of theft would stand.—Queen *vs* Preonath Banerjee, 11th April, 1866, p. 60, Vol. I., R. C. C. R.

Explanation 1. A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2. A moving, effected by the same act which effects the severance, may be a theft.

Explanation 3. A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4. A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5. The consent mentioned in the definition may be express or implied, and may be

given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Information to be given regarding dacoits, robbers, and receivers of stolen property.—Regulation VI. 1810, Section 2. Regulation I. 1811, Section 10. Regulation XX. 1817, Section 33. Information to be given regarding commission of murder, dacoity, robbery, house-breaking and theft.—Regulation VIII. 1814, Section 2. Regulation III. 1812, Section 4. Omitting to give such information punishable under Sections 176, 177, 202 and 203.

Prevention of robbery and theft, and responsibility of landholders for value of property stolen on their estates.—Regulation XVII. 1795, Section 3. Regulation XIV. 1807, Section 19. Responsibility of landholders for value of stolen property brought into their estates.—Regulation XIV. 1807, Section 19. Also suits for above may be instituted in Civil Court.

Illustrations.

(*a.*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b.*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c.*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d.*) A, being Z's servant, and intrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e.*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's pos-

session. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g.) A finds a ring lying on the high-road, not in possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h.) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding-place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i.) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k) Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(*m.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, takes away a book without Z's express consent, for the purpose merely of reading it and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o.*) A is a paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p.*) A in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Any Mag. *379. Whoever commits theft (378) shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both. Cog. Not bailable. Warrant.

Punishment for theft.

Do. Do. *380. Whoever commits theft (378) in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Do. Do. Warrant.

Theft in dwelling-house, &c.

A M. is not bound to commit a person accused under this Section, because he has been previously convicted under Chapter XVII., P. C. He can, if he thinks fit, pass sentence within

his competence; because the Schedule attached to C. C. P. does not provide that persons punishable under Section 75, P. C., are to be tried by any other Court than that which would have had jurisdiction over the offence, if there had not been any previous conviction.—Letter 885 of 1863, R. J. P. J., p. 109, Vol. II.

May be punished with whipping in lieu of punishment contained in this Section. See note on Section 2, Act VI. of 1864. On second conviction may be punished with whipping in *lieu* of, or in *addition* to, any other punishment he may for such offence be liable under P. C. Section 3, Act VI. of 1864.

Cog. Not bailable. Warrant.

Theft by clerk or servant of property in possession of master.

*381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft (378) in respect of any property in the possession (27) of his master or employer, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Ct of S or M. of D.

May be punished with whipping in lieu of punishment contained in this Section. See note on Section 2, Act VI of 1864. On second conviction may be punished with whipping in *lieu* of, or in *addition* to, any other punishment which he may for such offence be liable. Section 3, Act VI. of 1864.

Do. Do. Warrant.

Theft after preparation made for causing death or hurt, in order to the committing of the theft.

*382. Whoever commits theft (378), having made preparation for causing death (46), or hurt (319), or restraint (339), or fear of death, or of hurt, or of restraint, to any person (11), in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous im- Ct. of S.

prisonment for a term which may extend to ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

May be punished with whipping in lieu of punishment contained in this Section. See note on Section 2, Act VI. of 1864. On second conviction may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable. Section 3, Act VI. of 1864.

Illustrations.

(*a.*) A commits theft on property in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this Section.

(*b.*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this Section.

Of Extortion.

Dishonest intention is common to this, as well as the crime of theft. The difference between *theft* and *extortion* being that in the former the offender's intention must be to take "without that person's consent;" in the latter, by *wrongfully obtaining* of a consent. It will be observed that the word *moveable* is omitted in the definition of extortion, immoveable property, therefore may be the subject of the offence of extortion. The ingredients of extortion are, (1) putting a person in fear of injury to himself or another; (2) that such act was intentional; (3) that delivery of property took place; (4) and that this was done dishonestly.

Extortion.

استحصال بالجبر

383. Whoever intentionally puts any person (11) in fear of any injury (44) to that person or to any other, and thereby dishonestly (24) induces the person

so put in fear to deliver to any person any property (22) or valuable security (30), or anything signed or sealed which may be converted into a valuable security, commits "extortion."

Delivery of property is necessary to support a charge of extortion.—Queen *vs.* Dulecloodeen, 30th January, 1866. R. C. C. R., p. 20, Vol. I.

Extorting money by threats of bringing a criminal charge is putting a person in fear of personal injury within the meaning of this Section, whether charge be true or false.—Miscellaneous case, February 4th, 1867. R. C. C. R., Vol. III., p. 19

Distinction between this offence and theft is that extortion is committed by the wrongful obtaining of a consent.

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b.*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(*c.*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion

Unoog Bailable. Warrant.

Punishment for extortion.

*384. Whoever commits extortion (383) shall be punished with imprisonment of either description (53) for a term (a)Ct of S or M. of D.

(*a*) By new Bill, Ct of S or M of D, or Sub M, 1 t Class.

which may extend to three years, or with fine, or with both.

M D. or Sub M, 1st Class. — Uncog. Bailable. Warrant.

Putting person in fear of injury in order to commit extortion.

*385. Whoever, in order to the committing of extortion (383), puts any person (11) in fear or attempts to put any person in fear of any injury (44), shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Ct. of S. — Uncog. Not bailable. Warrant.

Extortion by putting a person in fear of death or grievous hurt.

*386. Whoever commits extortion (383) by putting any person (11) in fear of death (46) or of grievous hurt (320) to that person or to any other, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Do. Do. — Do. Do. Warrant.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

*387. Whoever, in order to the committing of extortion (383), puts or attempts to put any person (11) in fear of death (46) or of grievous hurt (320) to that person or to any other, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do. — Do. Do. Warrant.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

*388. Whoever commits extortion (383) by putting any person (11) in fear of an accusation against that person or any other, of having committed or attempted (511) to commit any offence (40) (Act IV, 1867) punishable with death,

(302, 303, 305, 396, 121, 132, 194,) or with transportation for life, (302, 305, 396, 121, 132, 194, 225,) or with imprisonment for a term which may extend to ten years, (119, 122, 123, 128, 131, 132, 194, 225, 232, 235, 238, 240, 251, 255, 304-7, 314-316, 326-329, 331, 333, 364, 366, 367, 371-373, 376, 377, 382, 386, 388, 389, 392, 394-396, 399, 400, 409, 412, 413, 336-439, 449, 450, 454, 455, 459, 460, 467, 493, 495,) or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under Section 377, (unnatural offence,) may be punished with transportation for life.

This Section is to be construed as if the word "offence" denoted anything made punishable by P C. or by any *special* (41) or *local* (42) law as therein defined. Act IV. of 1867.

May punish with whipping in *lieu* of punishment contained in this Section. See note on Section 2, Act VI. of 1864. If prisoner has been previously convicted under this Section, and shall *again* be convicted of the *same* offence, he may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C.—Section 3, Act VI. of 1864. Circular No. 2, para. 3, page 249.

Uncog. Not bailable. Warrant. Ct. of S.

Putting person in fear of accusation of offence, in order to commit extortion.

*389. Whoever, in order to the committing of extortion (383), puts or attempts to put any person (11) in fear of an accusation against that person or any other, of having committed or attempted to commit an offence (40) (Act IV, 1867) punishable with death, (302, 303, 305, 396, 121, 132, 194,) or

with transportation for life, (302, 305, 396, 121, 132, 194, 225,) or with imprisonment for a term which may extend to ten years, (119, 122, 123, 128, 131, 132, 194, 225, 232, 235, 238, 240, 251, 255, 304-307, 314-316, 326-329, 331, 333, 364, 366, 367, 371-373, 376, 377, 382, 386, 388, 389, 392, 394-396, 399, 400, 409, 412, 413, 436-439, 449, 450, 454, 455, 459, 460, 467, 493, 495,) shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under Section 377, (unnatural offence) may be punished with transportation for life.

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined. Act IV. of 1867.

May punish with whipping in *lieu* of punishment contained in this Section. See note on Section 2, Act VI. of 1864. If prisoner has been previously convicted under this Section, and shall *again* be convicted of the *same* offence, he may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C. —Section 3, Act VI. of 1864. Circular No. 2, para. 3, p. 249.

Of Robbery and Dacoity.

سرقه گیري اور ڈکیتي

390. In all robbery there is either theft (378) or extortion (383.)

Robbery.

سرقه بالجبر

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property (22) obtained by the theft (378), the offender, for

that end, voluntarily (39) causes or attempts to cause to any person (11) death (46), or hurt (319), or wrongful restraint (339), or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion (383) is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person (11) put in fear, and commits the extortion by putting that person in fear of instant death (46), of instant hurt (319), or of instant wrongful restraint (339), to that person or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation. The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Responsibility of landholders for value of stolen property brought into their estates.—Regulation XIV., 1807, Section 19. Also suits for above may be instituted in Civil Court. Prevention of robbery and theft, and responsibility of landholders for value of property stolen on their estates.—Regulation XVII., 1795, Section 9. Regulation XIV., 1807, Section 19.

Information to be given regarding thugs, dacoits, robbers, and receivers of stolen property.—Regulation VI. of 1810, Section 2. Regulation I. of 1811, Section 10. Regulation XX. of 1817, Section 33. Information to be given regarding commission of murder, dacoity, robbery, house-breaking and theft.—Regulation VIII. of 1814, Section 2. Regulation III. of 1812, Section 4. Omitting to give such information punishable under Sections 176, 177, 202, and 203, P. C.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same*

offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI. of 1864. See also paras. 3, 4, and 5, Circular No. 2, pp, 249, 250.

Illustrations.

(*a.*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b.*) A meets Z on the high road, shows a pistol, and demands Z's purse. Z in consequence surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c.*) A meets Z and Z's child on the high road. A takes the child and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—" Your child is in the hands of my gang, and will be put to death unless you send us ten thousand Rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

The Law Commissioners observe—" In one class of cases, theft and extortion are, in practice, confounded together so inextricably, that no Judge, however sagacious, could discriminate between them. This class of cases, therefore, has, in all systems of jurisprudence with which we are acquainted, been treated as a perfectly distinct class; and we think that this arrangement, though somewhat anomalous, is strongly recommended by conscience. We have therefore made robbery a separate crime." " Robbery" has been legally defined in English law as a " felonious taking of property from the person of another, (or in his presence,

against his will,) by violence or putting him in fear." "Felonious taking" has been defined as "when the goods are taken against the will of the owner, either in his absence, or in a clandestine manner; or where possession is obtained by any trick, device, or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods; and where the taker intends in any such case fraudulently to deprive the owner of his entire interest in the property against his will."

Dacoity.

ڈکیتی

391. When five or more persons (11) conjointly commit or attempt to commit a robbery (390), or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding (107) such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI. of 1864. See also paras. 3, 4, and 5, Circular No. 2, pp. 249, 250.

Dacoity. The use of the mere word "dacoity" in a charge gives no information to a prisoner, dacoity being a foreign word, and now a term of art. In cases of this nature, a prisoner should always be charged with having in company with more than 4 persons committed robbery, and with having thereby committed dacoity, an offence punishable, &c. (Pro., 23rd November, 1863.

Information to be given regarding thugs, dacoits, robbers, and receivers of stolen property.—Regulation VI. of 1810, Section 2. Regulation I. of 1811, Section 10. Regulation XX. of 1817, Section 33. Information to be given regarding commission of murder, dacoity, robbery, house-breaking, and theft.—Regulation

VIII. of 1814, Section 2. Regulation III. of 1812, Section 4. Omitting to give information punishable under Sections 176, 177, 202, and 203, P. C.

Dacoity. When five or more persons conjointly commit or attempt to commit a robbery.

Robbery. Theft or attempt to commit theft by causing hurt.

A prisoner charged with dacoity or robbery need not be charged with causing hurt as a separate offence, as causing hurt is part of the crime of dacoity.—Vol. I., p 65, R. C. C. R.

In the case of a prisoner convicted of two different dacoities, according to C. C. P., the Judge should not give a consolidated sentence, but separate sentence for each dacoity, the aggregate of the two not exceeding what he could award as a consolidated sentence.—Vol. I, p. 62, R. C. C. R.

Ct. of S or M. of D. — Cog Not bailable. Warrant.

Punishment for robbery.

*392. Whoever commits robbery (390) shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years. (Information compulsory. Section 138, C. C. P.)

Do. Do. — Do. Do. Warrant.

Attempt to commit robbery.

*393. Whoever attempts to commit robbery (390) shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI. of 1864. See also paras. 3, 4, and 5, Circular No. 2, pp 249, 250.

Cog Not bailable. Warrant. | Ct. of S.

Voluntarily causing hurt in committing robbery.

*394. If any person (11), in committing or in attempting (511) to commit robbery (390), voluntarily causes hurt (321) such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI. of 1864. See also paras. 3, 4, and 5, Circular No. 2, pp. 249, 250.

Do. Do. Warrant. | Do. Do.

Punishment for dacoity.

*395. Whoever commits dacoity (391) shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

When a prisoner committed dacoity and concealed the property so acquired near the scene of the dacoity, and *subsequently* removed such property to another place, and while so doing was apprehended, the Sessions Judge convicted and sentenced him to two separate terms of imprisonment. One Judge held this sentence to be legal; two Judges held it to be illegal—ruled accordingly, "*Illegal.*"—Vol. II., p. 278, R. J. P. J.

Do. Do. Warrant. | Do. Do.

Dacoity with murder.

396. If any one of five or more persons (11), who are conjointly committing dacoity (391), commits murder (300) in so committing dacoity, every one of those persons

shall be punished with death (53) or transportation for life (53), or rigorous imprisonment for a term which may extend to ten years (53), and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Ct. of S. *397. If, at the time of committing robbery (390) or dacoity (391), the offender uses any deadly weapon, or causes grievous hurt (322) to any person (11), or attempts (511) to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years. (Information compulsory, Section 138, C. C. P.) Cog. Not bailable. Warrant.

Robbery or dacoity with attempt to cause death or grievous hurt.

In a case of dacoity aggravated as described in Section 397, P. C., both Sections 395 and 397 must be cited in the charge. If the Judge be convinced that prisoner is guilty under one charge, he should not sentence him under another, merely on account of a doubtful confession of guilt.—No. 855, Vol. V., p. 137, R. J. P. J.

Do. Do. *398. If, at the time of attempting to commit robbery (390) or dacoity (391), the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years. (Information compulsory, Section 138, C. C. P.) Do. Do. Warrant.

Attempt to commit robbery or dacoity when armed with deadly weapon.

Do. Do. *399. Whoever makes any preparation for committing dacoity (391), shall be punished with rigorous imprisonment for a term which may extend to ten years, Do. Do. Warrant.

Making preparation to commit dacoity.

and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Cog Not bailable. Warrant.

Punishment for belonging to a gang of dacoits.

*400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons (11) associated for the purpose of habitually committing dacoity (391), shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Ct. of S.

Do. Do Warrant.

Punishment for belonging to a wandering gang of thieves.

*401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons (11) associated for the purpose of habitually committing theft (378) or robbery (390), and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. Do. Do.

Do. Do. Warrant.

Assembling for purpose of committing dacoity.

*402. Whoever at any time after the passing of this Act, shall be one of five or more persons (11) assembled for the purpose of committing dacoity (391), shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P. Do. Do.

Of Criminal Misappropriation of Property.

"This offence consists, not in wrongfully obtaining possession, but in the misappropriation, either permanently or for a time, of

property which is already without wrong in the possession of the offender. The dishonest intention to appropriate the property of another is common to theft and to criminal misappropriation. But this intention, which in theft is sufficiently manifested by a moving of the property, must in the other offence be carried into action by an actual misappropriation or conversion." (Macpherson, P. C., p. 359.)

Any Mág. Uncog. Bailable. Warrant.

Dishonest misappropriation of property.

بدیانتی سے مال کا تصرف بیجا

*403. Whoever dishonestly (24) misappropriates or converts to his own use any moveable property (22), shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this Section.

(*b.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this Section.

(*c.*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this Section.

Explanation 1. A dishonest misappropriation for a time only is a misappropriation within the meaning of this Section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z A has committed an offence under this Section.

Explanation 2. A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a*) A finds a Rupee on the high road, not knowing to whom the Rupee belongs. A picks up the Rupee. Here A has not committed the offence defined in this Section.

(*b*) A finds a letter on the road, containing a bank note. From the direction and contents of the letter he learns to whom

the note belongs He appropriates the note. He is guilty of an offence under this Section.

(*c.*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favor the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this Section.

(*d.*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this Section.

(*e.*) A finds a purse with money in it, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this Section.

(*f.*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately, without attempting to discover the owner. A is guilty of an offence under this Section.

Ct. of S. or M of D, or Sub M, 1st Class.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

Uncog. Bailable. Warrant.

*404. Whoever dishonestly (24) misappropriates or converts to his own use property (22), knowing that such property was in the possession (27) of a deceased person at the time of that person's decease, and has not since been in the possession of any person (11) legally entitled to such possession, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine; and if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this Section.

Of Criminal Breach of Trust.

Criminal breach of trust, like criminal misappropriation, is the dishonestly misappropriating of property. The difference between *theft* and *criminal breach of trust* is, that in the *former* there is a wrongful taking or moving, whereas in the *latter* the property has been received on your behalf, and instead of being delivered into your possession, is dishonestly misappropriated to the offender's own use. Likewise between criminal misappropriation and criminal breach of trust, in the latter case the offender is lawfully entrusted with the property, and the offender dishonestly misappropriates the same, or wilfully suffers any other person to do so.

Criminal breach of trust.

مجرمانہ خیانت

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly (24) misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

To constitute criminal breach of trust, it is essential to establish the criminal character of the act by which the trust has been violated.—Govt. *v.* Doorga Pershad, p. 49, Vol. III., Part I., 1863, N. A., N. W. P.

Held that an acceptance of a bond covenanting to return a

sum embezzled, precluded the acceptor of the bond from prosecuting the giver for criminal breach of trust.—Govt. *v.* Golam Hossein, p. 86, Vol. V., Part II., 1865, N. A., N. W. P.

(*a.*) A being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b.*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c.*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lac of Rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d.*) But if A in the last illustration, not dishonestly, but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e.*) A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f.*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Uncog. Not bailable. Warrant. Ct. of S. or M. of D., or Sub. M., 1st Class.

Punishment for criminal breach of trust.

*406. Whoever commits criminal breach of trust (405) shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

In cases where the law allows an offence to be compounded, held that such composition entitling a party to bring a civil action thereupon, amounts to a condonation of the criminal offence, and to an implied agreement not to prosecute; and that the party aggrieved must, in the event of stipulation made in conformity with the compact being infringed, bring a civil suit, and is not competent to prefer a criminal prosecution.—Government *v.* Sewaram and Beharee, p. 227, Vol. V, Part II, N. A., N. W. P., 1864.

Do. Do. Warrant. Do. Do.

Criminal breach of trust by carrier &c.

*407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust (405) in respect of such property, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Criminal breach of trust by a clerk or servant.

*408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust (405) in respect of that property, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Ct. of S. or M of D, or Sub: M., 1st Class.

Uncog. Not bailable. Warrant.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

*409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant (21), or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust (405) in respect of that property, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Of the Receiving of Stolen Property.

The essence of this offence consists in the receipt, with a full knowledge at the time of receipt, that the property was fraudulently obtained. What the receiver's object may be in receiving the property, provided he knows that it was unlawfully obtained, is perfectly immaterial.

Stolen property.

تصرف بیجا

*410. (22) Property the possession (27) whereof has been transferred by theft (378), or by extortion (383), or by robbery (390), and property which has been criminally misappropriated (403), or in respect of which the offence of criminal breach of trust (405) has been committed, is designated as "stolen property." But if such property subsequently comes into the possession of a person (11) legally entitled to the possession thereof, it then ceases to be stolen property.

Information to be given regarding thugs, dacoits, robbers, and receivers of stolen property.—Regulation VI, 1810, Section 2. Regulation I, 1811, Section 10. Regulation XX, 1817, Section 33. Information to be given regarding commission of murder,

dacoity, robbery, house-breaking, and theft.—Regulation VIII, 1814, Section 2. Regulation III, 1812, Section 4. Omitting to give such information punishable under Sections 176, 177, 202, and 203, P. C.

The owner of stolen property can recover the same from an innocent purchaser, or a pawnee who has taken it in pledge, without knowing the same to be stolen. The pawnee is not entitled to retain it as against the rightful owner after conviction of thief.—Government *vs.* Sheikh Choonoo, p. 225, Vol. V., Part II, N. A., N. W. P., 1864.

Cog Not bailable. Warrant.

Dishonestly receiving stolen property.

مال مسروقہ بدیانتی سے لینا

*411. Whoever dishonestly (24) receives or retains any stolen property (410), knowing or having reason to believe (26) the same to be stolen property, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

Ct. of S. or M of D, or Sub. M, 1st Class.

If prisoner has been previously convicted under this Section, and shall *again* be convicted of *same* offence, he may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C. —Section 3, Act VI of 1864. Circular No. 2, para. 3, page 249.

May punish with whipping in *lieu* of punishment contained in this Section —See note on Section 2, Act VI. of 1864.

Do. D. Warran.

Dishonestly receiving property stolen in the commission of a dacoity.

*412. Whoever dishonestly (24) receives or retains any stolen property (410), the possession whereof he knows or has reason to believe (26) to have been transferred by the commission of dacoity (391), or dishonestly receives from a person (11) whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property

Ct. of S.

which he knows or has reason to believe to have been stolen (410), shall be punished with transportation for life (53), or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

If prisoner has been previously convicted under this Section, and shall *again* be convicted of *same* offence, he may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C.—Section 3, Act VI. of 1864. Circular No. 2, para. 3, page 249.

May be punished with whipping in *lieu* of punishment contained in this Section. See note on Section 2, Act VI. of 1864.

Ct. of S. — Cog. Not bailable. Warrant.

Habitually dealing in stolen property.

*413. Whoever habitually receives or deals in property (22) which he knows or has reason to believe to be stolen property (410), shall be punished with transportation for life (53), or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under P. C.—Section 4, Act VI. of 1864. See also paras. 3, 4, and 5, Circular No. 2, pp. 249, 250.

Ct. of S. or M. of D., or Sub. M., 1st Class. — Do. Do. Warrant.

Assisting in concealment of stolen property.

*414. Whoever voluntarily (39) assists in concealing or disposing of, or making away with property (22) which he knows or has reason to believe (26) to be stolen property (410), shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

OF CHEATING.

In English law, the ingredients of the offence of cheating are —(1) a false pretence; (2) person making pretence must know it to be false; (3) there must be an intent to defraud; (4) owner of property must have been deceived by the pretence, and have parted with his property in consequence of his belief in its truth. Unless the property is parted with under such belief, it cannot be said that the property was obtained from the owner by means of the pretence.

Cheating.

115. Whoever, by deceiving any person (11), fraudulently (25) or dishonestly (24) induces the person so deceived to deliver any property (22) to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do (33) or omit to do (33) anything which he would not do or omit if he were not so deceived, and which act (33) or omission (33) causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation. A dishonest concealment of facts is a deception within the meaning of this Section.

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception.—Law Commissioners' Report, Note N., p. 112.

Held that a person who induces a farmer to ferry him over the river by promise of payment, and then refuses to pay the toll, is guilty of the offence specified in this Section, and punishable under Section 417.—Government *vs.* Luchmee Narain Singh, p. 431, Vol. II, Part IV, N. A., N. W. P., 1862.

In a case of cheating, where abetment of the offence is charged,

it is necessary to prove that the acts of the alleged abettor were intentionally done in concert with and in furtherance of the agents in the fraud.—Government *vs.* Girdharee, p. 47, Vol. III, Part I, N. A., N. W. P., 1863.

Illustrations.

(*a.*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b.*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c.*) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d.*) A, by tendering in payment for an article, a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e.*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f.*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g.*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h.*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i.*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Cheating by personation.

دوسرا شخص بلکه دغا

416. A person (11) is said to "cheat by personation," if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation. The offence (416) is committed whether the individual personated is a real or imaginary person.

Money yielded to an accused, more in consequence of the credulity of the person practised upon, than of any personal fear, renders the accused guilty of the offence of cheating; but if in the obtaining of property a person is intentionally put in fear of personal injury, this constitutes the offence of extortion.—*In re* Queen *vs.* Meajan and Ohboy Churn Dass, Vol. V., p. 147, R. J. P. J.

Illustration.

(*a.*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b.*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

M. of D. or Sub. M., 1st Class.

Punishment for cheating.

*417. Whoever cheats (415) shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Uncog. Bailable. Warrant.

Ct. of S. or M. of D., or Sub. M., 1st Class.

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

*418. Whoever cheats (415) with the knowledge that he is likely thereby to cause wrongful loss (23) to a person (11) whose interest in the transaction to which the cheating relates he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

Do. Do. Warrant.

Do. Do.

Punishment for cheating by personation.

*419. Whoever cheats by personation (416) shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

Do. Do. Warrant.

(a) Ct. of S.

Cheating and dishonestly inducing a delivery of property.

*420. Whoever cheats (415), and thereby dishonestly (24) induces the person (11) deceived to deliver any property (22) to any person, or to make, alter, or destroy the whole or any part of a valuable security (30), or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do. Warrant.

(a) By new Bill, Ct. of S. or M. of D.

Of Fraudulent Deeds and Dispositions of Property.

Uncog Bailable Warrant

M of D or Sub M, 1st Class

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

*421. Whoever dishonestly (24) or fraudulently (25) removes, conceals, or delivers to any person (11), or transfers or causes to be transferred to any person, without adequate consideration, any property (22), intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Do Do Warrant.

Do Do.

Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.

*422. Whoever dishonestly (24) or fraudulently (25) prevents any debt or demand due to himself or to any other person (11) from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Do. Do. Warrant.

Do. Do.

Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration

*423. Whoever dishonestly (24) or fraudulently (25) signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person (11) or

persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

M. of D or Sub. M., 1st Class. Uncog. Bailable. Warrant.

Dishonest or fraudulent removal or concealment of property.

*424. Whoever dishonestly (24) or fraudulently (25) conceals or removes any property (22) of himself or any other person (11), or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Of Mischief.

Mischief.

نقصان رساني

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss (23) or damage to the public (12) or to any person, (11) causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation 1. It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2. Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

To constitute the offences of mischief and cattle trespass, there must be intentional mischief. A malicious intent to cause damage is not required ; it is enough that there is an act done with knowledge that damage is likely to be caused Mere negligence, as in the case of stray cattle, does not seem to be penal, with the exception of neglect of pigs, which, by Section 18, Act III of 1857, is specially rendered liable to fine of 10 Rs.—Page 87, Mr. Campbell's Cir., J. C , O.

Illustrations.

(*a.*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b.*) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c.*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d.*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e.*) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the Underwriters. A has committed mischief.

(*f.*) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g.*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h.*) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

Any Mag. *426. Whoever commits mischief (425) shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine, or with both. Uncog Bailable. Summons.

Punishment for committing mischief.

M of D or Sub M 1st Class. *427. Whoever commits mischief (425), and thereby causes loss or damage to the amount of Fifty Rupees or upwards, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. Do. Do. Warrant.

Committing mischief, and thereby causing damage to the amount of Fifty Rupees.

A conviction for committing mischief, under this Code and also under the Cattle Trespass Act, not illegal. Letter No. 9090, 1863, Vol. II., p. 25, R. J. P. J.

Do. Do. *428. Whoever commits mischief (425) by killing, poisoning, maiming, or rendering useless, any animal (47) or animals of the value of Ten Rupees or upwards, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. Do. Do. Warrant.

Mischief by killing or maiming any animal of the value of Ten Rupees.

Ct. of S. or M of D. or Sub. M, 1st Class. *429. Whoever commits mischief (425) by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of Fifty Rupees or upwards, Do. Do. Warrant.

Mischief by killing or maiming cattle, &c, or any animal of the value of Fifty Rupees.

shall be punished with imprisonment of either description (53) for a term which may extend to five years, or with fine, or with both.

Cog Bailable. Warrant

Mischief by injury to works of irrigation, or by wrongfully diverting water.

*430. Whoever commits mischief (425) by doing any act (33) which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description (53) for a term which may extend to five years, or with fine, or with both.

Ct of S. or M of D, or Sub M, 1st Class.

Do Do Warrant.

Mischief by injury to public road, bridge, or river.

*431. Whoever commits mischief (425) by doing any act (33) which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description (53) for a term which may extend to five years, or with fine, or with both.

Do. Do.

Do Do Warrant.

Mischief by causing inundation or obstruction to public drainage attended with damage

*432. Whoever commits mischief (425) by doing any act (33) which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury (44) or damage, shall be punished with imprisonment of either description (53) for a term which may extend to five years, or with fine, or with both.

Do Do.

Ct. of S. *433. Whoever commits mischief (425) by destroying or moving any lighthouse or other light used as a sea-mark, or any sea-mark, or buoy, or other thing placed as a guide for navigators, or by any act (33) which renders any such lighthouse, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, or with fine, or with both. Cog. Bailable. Warrant.

Mischief by destroying or moving or rendering less useful a lighthouse or sea-mark, or by exhibiting false lights.

M. of D., or Sub. M., 1st Class. *434. Whoever commits mischief (425) by destroying or moving any land-mark fixed by the authority of a public servant (21), or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both. Uncog. Bailable. Warrant.

Mischief by destroying or moving, &c., a land-mark fixed by public authority.

Although there may be doubt what special enactments for the protection of village boundary marks are in force in Oudh, this Section supplies a punishment for the offence which will generally suffice.—P. 87, Mr. Campbell's Cir., J. C., O.

Ct. of S. *435. Whoever commits mischief (425) by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred Rupees or upwards, shall be punished with imprisonment of either description (53) for a term which may extend to seven Cog. Bailable. Warrant.

Mischief by fire or explosive substance with intent to cause damage to amount of 100 Rupees.

years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.

Cog. Not bailable. Warrant. Ct. of S.

Mischief by fire or explosive substance with intent to destroy a house, &c.

*436. Whoever commits mischief (425) by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property (22), shall be punished with transportation for life (53), or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.

Do. Do. Warrant. Do. Do.

Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.

*437. Whoever commits mischief (425) to any decked vessel (48) or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Punishment for the mischief described in the last Section when committed by fire or any explosive substance.

*438. Whoever commits or attempts (511) to commit, by fire or any explosive substance, such mischief (425 and 437) as is described in the last preceding Section, shall be punished with transportation for life (53), or with im-

prisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Ct. of S. *439. Whoever intentionally runs any vessel (48) aground or ashore, intending to commit theft (378) of any property (22) contained therein, or to dishonestly (24) misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Cog. Not bailable. Warrant.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

Do. Do. *440. Whoever commits mischief (425), having made preparation for causing to any person death (46), or hurt (319), or wrongful restraint (339), or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. Do. Do. Warrant.

Mischief committed after preparation made for causing death or hurt.

Of Criminal Trespass.

441. Whoever enters into or upon property in the possession (27) of another, with intent to commit an offence (40) (Act IV, of 1867), or to intimidate, insult, or annoy any such person (11) in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate,

Criminal trespass.

مداخلت بیجا
مجرمانه

insult, or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

This Section is to be construed as if the word "offence" denoted anything made punishable by P. C. or by any *special* (41) or *local* (42) law as therein defined, when the thing made punishable by such law is punishable with imprisonment for a term of six months or upwards, with or without fine.—Act IV, of 1867.

It is the *criminal intent* which is the principal ingredient in the offences of criminal trespass and house trespass.—No. 181, Vol. IV, p. 171, R. J. P. J.

There must be actual entry upon property in possession of another with intent to commit an offence, or intimidate, insult, or annoy. The mere entry and damage to property does not seem to be penal when there was no further criminal intent. —P. 86, Mr. Campbell's Circulars, J. C., O.

The name of "trespass" is given to every usurpation, however slight, of dominion over property. Trespass is not, as such, an offence, except when committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Aggravating circumstances are of two sorts. Criminal trespass may be aggravated by the way in which it is committed, also by the end for which it is committed —Law Commissioners' Report, Note N., p. 114.

House-trespass.

مداخلت بیجا بخانه

442. Whoever commits criminal trespass (441), by entering into or remaining in any building, tent, or vessel (48) used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

See note on preceding Section.

House-trespass may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass is designated as lurking house-trespass; the latter as house-breaking. House-trespass, in every form, may be aggravated by the time at which it is committed. Trespass of this sort has always been considered as a more serious offence when committed by night than when committed by day. Thus there are four aggravated forms of that sort of criminal trespass, designated as house-trespass, lurking house-trespass, house-breaking, lurking house-trespass by night and house-breaking by night. These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed * * * *e. g.*—A may commit house-breaking by night for the purpose of playing some idle tricks on the inmates. B may commit simple criminal trespass by merely entering another field for the purpose of murder. Here A commits trespass in the worst way. B commits trespass with the worst object.—Law Commissioners' Report, Note N., p. 115.

Explanation. The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass (442), having taken precautions to conceal such house-trespass from some person (11) who has a right to exclude or eject the trespasser from the building, tent, or vessel (48) which is the subject of the trespass, is said to commit "lurking house-trespass."

Vide Section 4, Act VI of 1864; also paras. 3, 4, and 5 of Circular No. 2, dated 8th April, 1864, H. C., Calcutta.

May punish with whipping in *lieu* of punishment contained in this Section. See note on Section 2, Act VI, 1864. If prisoner has been previously convicted under this Section, and shall *again* be convicted of the *same* offence, he may be punished with whip-

ping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C —*Vide* Section 3, Act VI. of 1864.

Lurking house-trespass by night

مخفي
مداخلت
بيحا بحانه

444. Whoever commits lurking house-trespass (443) after sunset and before sunrise, is said to commit "lurking house-trespass by night."

May punish with whipping in *lieu* of punishment contained in this Section.—*Vide* note on Section 2, Act VI. of 1864.

If prisoner has been previously convicted under this Section, and shall *again* be convicted of the *same* offence, he may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C. —*Vide* Section 3, Act VI. of 1864.—*Vide* Circular 2, paras 3, 4, and 5, dated 8th April, 1864, H. C., Calcutta —*Vide* Section 4, Act VI of 1864.

House-breaking.

نقب زني

445. A person is said to commit "house-breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described ; or if, being in the house or any part of it for the purpose of committing an offence, (40) (Act IV, 1867), or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :—

First. If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly. If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly. If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly. If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly. If he effects his entrance or departure by using criminal force, or committing an assault, or by threatening any person with assault.

Sixthly. If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation. Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this Section.

This Section is to be construed as if the word "offence"

denoted anything made punishable by P. C., or by any *special* (41) or *local* (42) law as therein defined.—Act IV of 1867. —*Vide* Section 4, Act IV of 1864, also paras. 3, 4, and 5 of Circular No. 2, dated 8th April, 1864.

May punish with imprisonment in *lieu* of punishment contained in this Section. See note on Section 2, Act VI of 1864.

If prisoner has been previously convicted under this Section, and shall *again* be convicted of the *same* offence, he may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C.—Section 3, Act VI of 1864, Circular No. 2, para. 3, dated 8th April, 1864.

Illustrations.

(*a.*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b.*) A commits house-trespass by creeping into a ship at a port-hole between-decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d.*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e.*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f*) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g.*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standing in Y's door-way A commits house-trespass by entering the house, having deterred

Z from opposing him by threatening to beat him. This is house-breaking.

House-breaking by night.

446. Whoever commits house-breaking (445) after sunset and before sunrise, is said to commit "house-breaking by night."

Vide Section 4, Act VI of 1864, also paras. 3, 4, and 5 of Circular No. 2, dated 8th April, 1864.

May punish with whipping in *lieu* of punishment contained in this Section. See note on Section 2, Act VI of 1864.

If prisoner has been previously convicted under this Section, and shall *again* be convicted of the *same* offence, he may be punished with whipping in *lieu* of, or in *addition* to, any other punishment to which he may for such offence be liable under P. C.—Section 3, Act VI of 1864. Circular No. 2, para. 3, dated 8th April, 1864.

Any Mag. — Cog. Bailable. Summons.

Punishment for criminal trespass.

*447. Whoever commits criminal trespass (441) shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Five Hundred Rupees, or with both.

Do. Do. — Do. Do. Warrant.

Punishment for house-trespass.

*448. Whoever commits house-trespass (442) shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine which may extend to One Thousand Rupees, or with both.

Ct. of S. — Cog. Not bailable. Warrant.

House-trespass in order to the commission of an offence punishable with death.

*449. Whoever commits house-trespass (442) in order to the committing of any offence punishable with death, (302, 303, 305, 396, 121, 132, 194,) shall be punished with transportation for

life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P).

Cog Not bailable Warrant — Ct of S.

House trespass in order to the commission of an offence punishable with transportation for life.

*450. Whoever commits house-trespass (442) in order to the committing of any offence punishable with transportation for life, (71, 121, 122, 125, 128, 130, 132, 194, 222, 225, 226, 238, 255, 302, 304, 305, 307, 311, 313, 314, 326, 329, 364, 371, 376, 377, 388, 389, 394, 395, 396, 400, 409, 412, 413, 436, 438, 449, 459, 460, 467, 472, 474, 475, 477,) shall be punished with imprisonment of either description (53) for a term not exceeding ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Cog Bailable — Any Mag.

Cog Not bailable Warrant. — Do Do.

House trespass in order to the commission of an offence punishable with imprisonment

*451. Whoever commits house-trespass (442) in order to the committing of any offence punishable with imprisonment, (all the penal Sections of the Code except 137, 154, 155, 156, 278, 283, 290,) shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft (378), the term of the imprisonment may be extended to seven years.

Do Do. Warrant. — Ct of S. or M of D or Sub M, 1st Class.

House-trespass after preparation made for causing hurt to any person.

*452. Whoever commits house-trespass (442), having made preparation for causing hurt (319) to any person (11), or for assaulting (351) any person, or for wrongfully restraining (339)

any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

M of D. or Sub. M., 1st Class. | Cog. Not bailable. Warrant.

Punishment for lurking house-trespass or house-breaking.

*453. Whoever commits lurking house-trespass (443) or house-breaking (445) shall be punished with imprisonment of either description (53) for a term which may extend to two years, and shall also be liable to fine.

Ct. of S. or M of D. or Sub. M., 1st Class. | Do. Do. Warrant.

Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.

*454. Whoever commits lurking house-trespass (443) or house-breaking (445) in order to the committing of any offence punishable with imprisonment, (all the penal Sections of the Code except 137, 154, 155, 156, 278, 283, 290,) shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft (378), the term of the imprisonment may be extended to ten years.

Do. Do. | Do. Do.

In charges under Sections 454 and 457 of the Penal Code, the lurking house-trespass or house-breaking being first established, the intent to commit an offence on the part of the prisoner may be presumed, and it is for him to rebut that presumption by shewing that he entered the house for an honest purpose; and if the prisoner be of bad character or have no ostensible means of livelihood, it may be presumed that the offence which he entered the house with the intention of committing was theft, unless these circumstances themselves are such as to rebut that presumption, or the prisoner prove the contrary.—Circular No. 82 of 1853, J. C., O.

Cog. Not bailable. Warrant.

Lurking house-trespass or house-breaking after preparation made for causing hurt to any person.

*455. Whoever commits lurking house-trespass (443) or house-breaking (445), having made preparation for causing hurt (319) to any person (11), or for assaulting (351) any person, or for wrongfully restraining (339) any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. Ct. of S.

Do. Do. Warrant.

Punishment for lurking house-trespass or house-breaking by night.

*456. Whoever commits lurking house-trespass by night (444) or house-breaking by night (446) shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.) Ct. of S. or M of D., or Sub. M., 1st Class.

Do. Do. Warrant.

Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

*457. Whoever commits lurking house-trespass by night (444) or house-breaking by night (446), in order to the committing of any offence punishable with imprisonment, (all the penal Sections of the Code except 137, 154, 155, 156, 278, 283, 290, (shall be punished with imprisonment of either description (53) for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft (378), the term of the imprisonment may be extended to fourteen years. (Information compulsory, Section 138, C. C. P. Do. Do.

A Magistrate is not bound to commit a person accused under this Section because he has been previously convicted under Chapter XVII, P. C. He can, if he thinks fit, pass sentence within his competence, because the schedule attached to C. C. P. does not provide that persons punishable under Section 75, P. C., are to be tried by any other Court than that which would have had jurisdiction over the offence, if there had not been any previous conviction. Letter 885 of 1863. R. J. P. J., page 109, Vol. II.

The conviction of a prisoner for two offences, when the one offence formed the integral portion of the other, held to be in effect punishing twice for the same offence, and therefore illegal. P. 31, No. V., Reports of H. C., N. W. P., Vol. I, November, 1866.

A entered into a house by night and stole a lotah. The Magistrate sentenced him to 30 stripes for theft of lotah, and to two years' rigorous imprisonment for lurking house-trespass by night, under this Section. The Judicial Commissioner pointed out to Magistrate that double conviction and sentence was, under the circumstances, illegal, for the offence of which prisoner was guilty was made up of parts, and he ought not therefore to have been punished with the punishment of more than one of the offences.—*Vide* Section 71, Penal Code. Book Circular 83, 1864, J. C. O.

Ct. of S. Cog. Not bailable. Warrant.

Lurking house-trespass or house-breaking by night after preparation made for causing hurt to any person.

*458. Whoever commits lurking house-trespass by night (444) or house-breaking by night (446), having made preparation for causing hurt (319) to any person (11), or for assaulting (351) any person, or for wrongfully restraining (339) any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description (53) for a term which may extend to fourteen years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Cog Not bailable. Warrant

Ct of S.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

*459. Whoever, whilst committing lurking house-trespass (443) or house-breaking (445), causes grievous hurt (320) to any person (11), or attempts (511) to cause death (46) or grievous hurt to any person, shall be punished with transportation for life (53), or imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Do. Do. Warrant.

Do. Do.

All persons jointly concerned in house-breaking, &c., to be punishable for death or grievous hurt caused by one of their number.

*460. If, at the time of the committing of lurking house-trespass by night (444) or house-breaking by night (446), any person (11) guilty of such offence shall voluntarily (39) cause or attempt (511) to cause death (46) or grievous hurt (320) to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life (53), or with imprisonment of either description (53), for a term which may extend to ten years, and shall also be liable to fine. (Information compulsory, Section 138, C. C. P.)

Cog Bailable. Warrant.

M. of D or Sub M, 1st Class.

Dishonestly breaking open any closed receptacle containing or supposed to contain property.

*461. Whoever dishonestly (24) or with intent to commit mischief (425), breaks open or unfastens any closed receptacle which contains or which he believes to contain property (22), shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Ct. of S. or M. of D., or Sub M., 1st Class.

Cog. Bailable. Warrant.

Punishment for same offence when committed by person entrusted with custody.

*462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property (22), without having authority to open the same, dishonestly (24), or with intent to commit mischief (425), breaks open or unfastens that receptacle, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

اٹھارھواں باب جعلسازي

Section 5, Act VI. of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked* in this chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light rattan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death* or *transportation* or *penal servitude* or imprisonment for *more than five years*, shall be whipped. Section 7, Act VI of 1864.

Forgery.

جعلسازی

463. Whoever makes any false document (29) or part of a document with intent to cause damage or injury (44) to the public (12) or to any person, (11) or to support any claim or title, or to cause any person to part with property, or to enter into any

express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—See Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, dated 8th April, 1864.

Held, that to establish a charge of forgery it is unnecessary to prove that fraud was intended in the case in which the forged document was produced. It is sufficient to prove that the document was fraudulently uttered with intent to cause injury to any person. Government *vs.* Mirza Mull, 27th June, 1862, Vol. I, Part II, p. 132, N. A., N. W. P.

464. A person is said to make a false document—

Making a false document.

جهوتي
اينتا دستاويز

First.—Who dishonestly (24) or fraudulently (25) makes, signs, seals, or executes a document (29) or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person (11) by whom or by whose authority he knows that it was not made, signed, sealed, executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or,

Secondly.—Who, without lawful authority, dishonestly (24) or fraudulently (25), by cancellation or otherwise, alters adocument (29) in any material part thereof, after it has been made or executed

either by himself or by any other person, whether such person (11) be living or dead at the time of such alteration; or,

Thirdly.—Who dishonestly (24) or fraudulently (25) causes any person (11) to sign, seal, execute, or alter a document (29), knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

It is not necessary that a person should be pronounced insane under Act XXXV of 1858 before another can be sued under this clause. Government *vs.* Ajoodhya Sing, p. 11, Vol. IV, Part I, 1864, N. A., N. W. P.

Illustrations.

(*a.*) A has a letter of credit upon B for Rupees 10,000 written by Z. A, in order to defraud B, adds a cypher to the 10,000, and makes the sum 100,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b.*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase money. A has committed forgery.

(*c.*) A picks up a cheque on a Banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand Rupees. A commits forgery.

(*d.*) A leaves with B, his agent, a cheque on a Banker, signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand Rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand Rupees. B commits forgery.

(*e.*) A draws a Bill of Exchange on himself in the name of B without B's authority, intending to discount it as a genuine Bill with a Banker, and intending to take up the Bill on its maturity. Here, as A draws the Bill with intent to deceive the Banker by leading him to suppose that he had the security of B, and thereby to discount the Bill, A is guilty of forgery.

(*f.*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g.*) A endorses a Government Promissory Note and makes it payable to Z, or his order, by writing on the Bill the words "Pay to Z, or his order," and signing the endorsement. B dishonestly erases the words "pay to Z, or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h.*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i.*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j.*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k.*) A without B's authority writes a letter and signs it in B's name certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he

intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1. A man's signature of his own name may amount to forgery (463).

Illustrations.

(*a.*) A signs his own name to a Bill of Exchange, intending that it may be believed that the Bill was drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a Bill of Exchange drawn by B upon Z, and negotiate the Bill as though it has been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the Bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a Bill of Exchange payable to the order of a different person of the same name. A endorses the Bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. here A has committed forgery.

(*d.*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by ante-dating it.

(*e.*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and in order to give a color to the transaction, writes a Promissory Note binding himself to pay to B a sum for value received, and ante-dates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2. The making of a false document (464) in the name of a fictitious person (11), intending it to be believed that the document (29) was made by a real person, or in the name of a deceased person intending it to be believed that the document was made by the person in his lifetime, may amount to forgery (463).

Illustration.

A draws a Bill of Exchange upon a fictitious person, and fraudulently accepts the Bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Uncog. Bailable. Warrant.

Punishment for forgery.

*465. Whoever commits forgery (463) shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. Ct. of S.

The punishment for using as genuine a document which is known to be forged is not provided for by this Section 465. Held, that the punishment which may be awarded under Section 471, Penal Code, is not the punishment laid down for simple forgery; but that the offender shall be punished as if he had forged such a document as the one used. Government *vs.* Kuddhe, August 23rd, 1862, Vol. II, Part III, page 209, N. A., N. W. P.

Uncog. Not bailable. Warrant.

Forgery of a record of a Court of Justice, or of a public Register of Births, &c.

*466. Whoever forges (463) a document (29), purporting to be a record or proceeding of or in a Court of Justice, (20) or a Register of Birth, Baptism, Marriage, or Burial, or a Register kept by a public servant (21) as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take Do. Do.

any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C. Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, dated 8th April, 1864.

Ct. of S. Uncog. Not bailable. Warrant.

Forgery of a valuable security or will.

*467. Whoever forges (463) a document (29) which purports to be valuable security (30) or a will, (31) or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property (22), or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, dated 8th April, 1864.

When a charge of forgery is made, it is not absolutely necessary that the document said to be forged should be produced in evidence. The confession of the accused person held to be proof of the existence of the *corpus delicti.* Government *vs.* Buldeo Dass, page 213, Vol. III, Part IV., 1863, N. A., N. W. P.

Uncog. Not bailable. Warrant. Forgery for the purpose of cheating. Ct. of S.

*468. Whoever commits forgery (463), intending that the document forged (470) shall be used for the purpose of cheating, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, dated 8th April, 1864.

Uncog. Bailable. Warrant. Forgery for the purpose of harming the reputation of any person. Do. Do.

*469. Whoever commits forgery (463), intending that the document forged (470) shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine.

Whoever, having been *previously* convicted of the offence specified in this Section, shall be *again* convicted of the *same* offence, may be punished with whipping in *addition* to any other punishment to which he may be liable under the P. C.—Section 4, Act VI of 1864. See also paras. 3, 4, and 5, Circular No. 2, dated 8th April, 1864.

"A forged document."

470. A false document made wholly or in part by forgery is designated "a forged document."

Ct. of S.

Using as genuine a forged document.

*471. Whoever fraudulently (25) or dishonestly (24) uses as genuine any document (29) which he knows or has reason to believe to be a forged document (470), shall be punished in the same manner as if he had forged such document.—*Vide* Section 465.

Uncog. Bailable. Warrant.

An accused cannot be tried for fabricating a legal document without sanction of the Court before which the offence was committed, if the forgery was committed before 1st January, 1862.—Page 31, Vol. I, R. C. C. R., 20th February, 1866.

Section 48, Act II of 1855, is applicable to criminal trials. Where, upon a charge under Section 471, Penal Code, comparison is instituted between a seal admittedly genuine, and the seal impugned as a forgery, the former cannot, if the accused dispute its authenticity, be said to be "undisputed."—Queen *vs.* Amanoolah Mottah, 18th June, 1866, page 2, Vol. II., R. C. C. R.

Do. Do.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery, punishable under Section 467.

*472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery (463) which would be punishable under Section 467 (forgery of a valuable security), or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description (53) for

Uncog. Not bailable. Warrant.

a term which may extend to seven years, and shall also be liable to fine.

Uncog. Not bailable. Warrant. Ct. of S.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery, punishable otherwise.

*473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery (463) which would be punishable under any Section of this Chapter (XVIII) other than Section 467 (forgery of a valuable security), or with such intent has in his possession (27) any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do. Warrant. Do. Do.

Having possession of a valuable security or will known to be forged with intent to use it as genuine.

*474. Whoever has in his possession (27) any document (29), knowing the same to be forged (470), and intending that the same shall fraudulently (25) or dishonestly (24) be used as genuine, shall, if the document is one of the description mentioned in Section 466 (forgery of a record of Court of Justice, or of a public Register of Births, power of attorney, &c.), be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in Section 467 (forgery of a valuable security), shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Ct. of S. *475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document (29) described in Section 467 (forgery of a valuable security), intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession (27) any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Uncog. Not bailable. Warrant.

Counterfeiting a device or mark used for authenticating documents described in Section 467, or possessing counterfeit marked material.

Do. Do. *476. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document (29) other than the documents described in Section 467 (forgery of a valuable security), intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession (27) any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Do. Do. Warrant.

Counterfeiting a device or mark used for authenticating documents other than those described in Section 467, or possessing counterfeit marked material.

Uncog. Not bailable. Warrant. Ct. of S.

Fraudulent cancellation, destruction, &c., of a will.

*477. Whoever fraudulently (25) or dishonestly (24), or with intent to cause damage or injury (44) to the public (12) or to any person (11), cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes, or attempts to secrete, any document which is or purports to be a will (31), or an authority to adopt a son, or any valuable security (30), or commits mischief (425) in respect to such document, shall be punished with transportation for life, or with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine.

Of Trade and Property-marks.

Trade-mark.
نشان حرفه

478. A mark used for denoting that goods have been made or manufactured by a particular person (11) or at a particular time or place, or that they are of a particular quality, is called a trade-mark.

Property-mark.
نشان ملکیت

479. A mark used for denoting that moveable property belongs to a particular person (11), is called a property-mark.

Using a false trade-mark.

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were

made or manufactured by any person (11) by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark (471).

Using a false property-mark.

481. Whoever marks any moveable property (22) or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person (11) to whom they do not belong, is said to use a false property-mark (479).

M. of D., or Sub. M., 1st Class. Uncog. Bailable. Warrant.

Punishment for using a false trade or property-mark with intent to deceive or injure any person.

*482. Whoever uses any false trade-mark (480) or any false property-mark (481) with intent to deceive or injure (44) any person (11), shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Do. Do. Do. Do. Warrant.

Counterfeiting a trade or property-mark used by another with intent to cause damage or injury.

*483. Whoever, with intent to cause damage or injury (44) to the public (12) or to any person (11), knowingly counterfeits any trade (478) or property-mark (479) used by any other person, shall be punished with imprisonment

of either description (53) for a term which may extend to two years, or with fine, or with both.

Uncog. Bailable. Summons.

Ct of S. or M. of D.

Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.

*484. Whoever, with intent to cause damage or injury (44) to the public (12) or to any person (11), knowingly counterfeits any property-mark (479) used by a public servant (21), or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description (53) for a term which may extend to three years, and shall also be liable to fine.

Do. Do. Summons.

Do. Do.

Fraudulent making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.

*485. Whoever makes or has in his possession (27) any die, plate, or other instrument for the purpose of making or counterfeiting any public (12) or private property (479) or trade-mark (478), with intent to use the same for the purpose of counterfeiting such mark (478-9), or has in his possession any such property or trade-mark with intent that the same shall be used for the purpose of denoting that any goods or merchandise were made or manufactured by any particular person (11) or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality

of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

M of D. or Sub M., 1st Class. Uncog. Bailable. Summons.

Knowingly selling goods marked with a counterfeit property or trade-mark.

*486. Whoever sells any goods with a counterfeit property (479) or trade-mark (478), whether public (12) or private, affixed to, or impressed upon, the same, or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged (463) or counterfeit, or that the same has been affixed to, or impressed upon, any goods or merchandize not manufactured or made by the person (11), or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Ct. of S. or M of D., or Sub. M., 1st Class. Do. Do. Summons.

Fraudulently making a false mark upon any package or receptacle containing goods.

*487. Whoever fraudulently (25) makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant (21) or any other person (11) to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof,

shall be punished with imprisonment of either description (53) for a term which may extend to three years, or with fine, or with both.

Uncog. Bailable. Summons.

Punishment for making use of any such false mark.

*488. Whoever fraudulently (25) makes use of any such false mark with the intent last aforesiad, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding Section.

Ct. of S. or M. of D., or Sub. M., 1st Class.

Do. Do. Summons.

Defacing any property-mark with intent to cause injury.

*489. Whoever removes, destroys, or defaces any property-mark (479), intending or knowing it to be likely that he may thereby cause injury (44) to any person (11), shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

M. of D. or Sub. M., 1st Class.

CHAPTER XIX.

اونیسواں باب

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

خدمت کے معاہدہ کا نقص

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864.) No *female,*

nor any person sentenced to *death* or *penal servitude* or imprisonment for *more than* 5 *years*, shall be whipped.—Section 7, Act VI of 1864.

M. of D. or Sub. M., 1st Class.

Uncog. Bailable. Summons.

Breach of contract of service during a voyage or journey.

خدمت سفر تری یا خشکی کے معاهده کا نقص

*490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person (11) or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily (39) omits (33) so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description (53) for a term which may extend to one month, or with fine which may extend to One Hundred Rupees, or with both.

It is very doubtful whether the words "during a voyage or journey" do not limit the offence made punishable under this Section to offences against travellers.

In general, a mere breach of contract ought not to be an offence, but only the subject of a civil action. To this rule there are exceptions. Some breaches of contract are very likely to cause evil, such as no damages can repair, and are also likely to be committed by persons from whom it is improbable that any damages can be obtained. Such breaches of contract are proper subjects for penal legislation.—Law Commissioners' Report, Note P., p. 115.

A servant or other person who engages for a journey, or to attend on a sick person, or a laborer who has received an advance, or has been conveyed at the master's expense on an engagement for a term, can be punished under this Section. The mere desertion of a servant who has engaged for a specified time, or a monthly servant without the notice required by law, can only be

made the subject of a civil action.—P. 87, Mr. Campbell's Circulars, J. C., O.

Illustrations.

(*a.*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this Section.

(*b.*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this Section.

(*c.*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this Section.

(*d.*) A, by unlawful means, compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation. It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a Dâk Company to drive his carriage for a month. B employs the Dâk Company to convey him on a journey, and during the month the Company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this Section.

M. of D., or Sub. M., 1st Class.

Uncog. Bailable. Summons.

Breach of contract to attend on, and supply the wants of, helpless persons.

*491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person (11), who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily (39) omits so to do, shall be punished with imprisonment of either description (53) for a term which may extend to three months, or with fine which may extend to Two Hundred Rupees, or with both.

Do. Do.

Do. Do. Summons.

Breach of a contract to serve at a distant place to which the servant is conveyed at the master's expense.

*492. Whoever, being bound by lawful contract in writing to work for another person (11) as an artificer, workman, or laborer, for a period of not more than three years, at any place within British India (15) to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily (39) deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description (53) for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

Vide note on Section 117, P. C.

A laborer once punished under this Section cannot receive a second punishment on his refusal to complete the same contract,

and on his release from first term of imprisonment.—Letter No. 611, 1863, Vol. II, p. 24, R. J. P. J.

CHAPTER XX.

بیسواں باب

OF OFFENCES RELATING TO MARRIAGE.

تعلق ازدواج

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in *lieu*, of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864.) No *female*, nor any person sentenced to *death* or *penal servitude* or imprisonment for *more than 5 years*, shall be whipped.—Section 7, Act VI of 1864.

Uncog. Not bailable. Warrant. Ct. of S.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

همخانگي جو کسي مرد نے ازدواج جائز کے دھوکھی دینے سے کری هو

*493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Ct. of s. *494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Uncog. Bailable. Warrant.

Marrying again during the lifetime of husband or wife.

Where a Mahomedan wife deceitfully contracts marriage during her husband's lifetime, the offence is not taken out of the purview of Sections 494 and 495, from the fact of second marriage being a Nikah.—27th August, 1866, p. 48, Vol. II., R. C. C. R., Queen *vs.* Jadee and Beedhy.

Exception. This Section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

Do. Do. *495. Whoever commits the offence defined in the last preceding Section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former

Uncog. Not bailable. Warrant.

Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.

marriage, shall be punished with imprisonment of either description (53) for a term which may extend to ten years, and shall also be liable to fine.

Vide note on preceding Section.

Uncog. Not bailable Warrant.

Marriage ceremony gone through with fraudulent intent without lawful marriage.

*496. Whoever, dishonestly (24) or with a fraudulent (25) intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description (53) for a term which may extend to seven years, and shall also be liable to fine. Ct. of S.

Uncog Bailable. Warrant.

Adultery.

زنا

*497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe (26) to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape (375), is guilty of the offence of adultery, and shall be punished with imprisonment of either description (53) for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor. Do. Do.

The Criminal Court may accede to the application of a prosecutor to withdraw a charge of adultery. The production of marriage certificate, or other satisfactory evidence of the marriage, is strictly required in indictments of adultery.—No. 1144, High Court, Calcutta, 15th December, 1865.

"A charge of an offence under Section 497, I. P. C., shall not be instituted except by the husband of the woman." (Sec. 177, C. C. P.) The law on this subject was the same before the Penal Code was passed. Under the old law, prosecution for adultery

could not be instituted except by the husband.—*Vide* Act II, 1845.

M. of D. *498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe (26) to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals, or detains with that intent any such woman, shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both. Uncog. Bailable. Warrant.

Enticing or taking away or detaining with a criminal intent a married woman.

When a charge is preferred by a woman's husband, and the circumstances are such that sexual intercourse between her and the accused person may be presumed to have taken place, the latter should be committed for trial, and it will be for him to rebut that presumption before the Sessions Court.—J. C., O. Book Circular No. VIII, No. 21-448 of 1868, dated 28th May.

On a charge under this Section of A and B having detained C's wife in view to A committing adultery with her,—*Held*, that physical constraint is not an essential of the offence; that the words of the Section, "conceals or detains," are intended to apply to the enticing or inducing a wife to withhold or conceal herself from her husband; that, depriving the husband of his proper control over his wife for the purpose of illicit intercourse is the gist of the offence, just as it is of the offence of taking away a wife under the same Section; that a detention occasioning such deprivation might be brought about simply by the influence of allurements and blandishments.—Case No. 96 of 1867, H. Ct., Madras, 1st May, 1868. Madras Jurist, No. 5, Vol. III, p. 186.

CHAPTER XXI.

اکیسوان باب

OF DEFAMATION.

ازاله حیث عرفي

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 2, dated 8th April, 1864). No *female*, nor any person sentenced to *death* or *transportation* or *penal servitude* or imprisonment for *more than five years*, shall be whipped.—(Section 7, Act VI of 1864.)

Defamation.

حیث عرفی ازاله

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person (11), intending to harm, or knowing or having reason to believe (26) that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. It may amount to defamation (499) to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. It may amount to defamation (499) to make an imputation concerning a company or an association, or collection of persons as such.

Explanation 3. An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4. No imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

The essence of this offence consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavorable sentiments is exposed.—Law Commissioners' Report, Note R., p. 119.

A wrote to B informing him that he, B, was no gentleman. A question arose as to the remedy which B had against A. A charge of defamation would not lie under this Section, because under the fourth Explanation no imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, lowers the character or credit of that person; and it could not be held that the mere writing of a letter to a person lowers his character or credit *in the estimation of others.*

B's only remedy then was under Section 504, P. C., and whether A, in informing B that he was no gentleman, intended or knew it to be likely that the provocation would cause him to break the public peace, was a question of fact to be determined by the Magistrate who tried the case.—Book Circular VIII, Criminal side, 3rd February, 1865. J. C., O.

Illustrations.

(*a.*) A says "Z is an honest man, he never stole B's watch," intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(*b.*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(*c.*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception. It is not defamation (499) to impute anything which is true concerning any person (11), if it be for the public (12) good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception. It is not defamation (499) to express in good faith (52) any opinion whatever respecting the conduct of a public servant (21) in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception. It is not defamation (499) to express in good faith (52) any opinion whatever respecting the conduct of any person (11) touching any public (12) question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on

a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception. It is not defamation (499) to publish a substantially true report of the proceedings of a Court of Justice (20), or of the result of any such proceedings.

Explanation. A Justice of the Peace or other Officer holding an enquiry in open Court, preliminary to a trial in a Court of Justice (20), is a Court within the meaning of the above Section.

Fifth Exception. It is not defamation (499) to express in good faith (52) any opinion whatever respecting the merits of any case, Civil or Criminal, which has been decided by a Court of Justice (20), or respecting the conduct of any person (11) as a party, witness, or agent in such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Illustrations.

(*a.*) A says—" I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this Exception, if he says this in good faith; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(*b.*) But if A says—" I do not believe what Z asserted at that trial, because I know him to be a man without veracity."—A is not within this Exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception. It is not defamation (499) to express in good faith (52) any opinion respecting the merits of any performance which its author has submitted to the judgment of the public (32), or respecting the character of the author, so far as his character appears in such performance, and no farther.

Explanation. A performance may be submitted to the judgment of the public (32), expressly or by acts (33), on the part of the author, which imply such submission to the judgment of the public.

Illustrations.

(*a.*) A person who publishes a book, submits that book to the judgment of the public.

(*b.*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d.*) A says of a book published by Z—" Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within this Exception, if he says this in good faith; inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(*e.*) But if A says—" I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception. It is not defamation (499) in a person (11) having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good

faith (52) any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his Bank for the conduct of such cashier as such cashier—are within this Exception.

Eighth Exception. It is not defamation (499) to prefer in good faith (52) an accusation against any person (11) to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this Exception.

Ninth Exception. It is not defamation (499) to make an imputation on the character of another, provided that the imputation be made in good faith (52) for the protection of the interests of the person (11) making it, or of any other person, or for the public (12) good.

Illustrations.

(*a.*) A shopkeeper says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have

noo pinion of his honesty." A is within the Exception if he has made this imputation on Z in good faith for the protection of his own interests.

(*b.*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the Exception.

Tenth Exception. It is not defamation (499) to convey a caution, in good faith (52), to one person (11) against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public (12) good.

Uncog. Bailable. Warrant.

Punishment for defamation.

*500. Whoever defames (499) another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. (a) M of D.

Do. Do. Warrant.

Printing or engraving matter known to be defamatory.

*501. Whoever prints or engraves any matter, knowing or having good reason to believe (26) that such matter is defamatory (499) of any person (11), shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. (a) Do. Do.

Do. Do. Warrant.

Sale of printed or engraved substance containing defamatory matter.

*502. Whoever sells or offers for sale any printed or engraved substance containing defamatory (499) matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. (a) Do. Do.

(a) By new Bill, Ct. of S, or M, of D,

CHAPTER XXII.

بائیسوان باب

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE

تحویف مجرمانه

Section 5, Act VI of 1864, provides for the whipping of juvenile (Section 83, P. C.) offenders convicted of offences specified in the Sections marked * in this Chapter. Juveniles may be punished with whipping only in *lieu* of any other punishment, but whipping may be inflicted for *first* or *any other* offence, and is to be administered in the way of school discipline with a light ratan. (Para. 6, Circular No. 8, dated 8th April, 1864). No *female*, nor any person sentenced to *death* or *transportation*, or *penal servitude* or imprisonment for *more than five years*, shall be whipped. (Section 7, Act VI of 1864).

Criminal intimidation.

تحویف مجرمانه

503. Whoever threatens another with any injury (44) to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act (33) which he is not legally bound to do (43), or to omit (33) to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this Section.

Illustration.

A, for the purpose of inducing B to desist from the prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Uncog. Bailable. Warrant. Any Mag.

Intentional insult with intent to provoke a breach of the peace.

*504. Whoever intentionally insults, and thereby gives provocation to any person (11), intending or knowing it to be likely that such provocation will cause him to break the public peace (159), or to commit any other offence (40), shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Uncog Not bailable Warrant. M. of D.

Circulating false report with intent to cause mutiny or an offence against the State, &c.

*505. Whoever circulates or publishes any statement, rumour, or report which he knows to be false, with intent to cause any officer, soldier, or sailor in the Army or Navy of the Queen (13) to mutiny, (Chapter VII,) or with intent to cause fear or alarm to the public (12), and thereby to induce any person to commit an offence against the State, (Chapter VI,) or against the public tranquillity, (Chapter VI,) shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both.

Uncog. Bailable. Warrant. M of D, or Sub. M., 1st Class.

Punishment for criminal intimidation.

*506. Whoever commits the offence of criminal intimidation (503) shall be punished with imprisonment of either description (53) for a term which may extend to two years, or with fine, or with both; and

if the threat be to cause death (46) or grievous hurt (320), or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

If threat be to cause death or grievous hurt, &c.

(a) Ct. of S.

Uncog. Bailable. Warran

(a) Do. Do. *507. Whoever commits the offence of criminal intimidation (503) by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description (53) for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding Section.

Criminal intimidation by an anonymous communication.

Do. Do. Warrant.

M. of D. *508. Whoever voluntarily (39) causes or attempts to cause any person to do (33) anything which that person (11) is not legally bound to do (43), or to omit (33) to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to

Act caused by inducing a person to believe that he will be rendered an object of the Divine displeasure.

Do. Do. Warran

(a) By new Bill, or M. of D.

omit, shall be punished with imprisonment of either description (53) for a term which may extend to one year, or with fine, or with both.

Illustrations.

(*a.*) A sits dhurna at Z's door, with the intention of causing it to be believed that by so sitting he renders Z an object of Divine displeasure. A has committed the offence defined in this Section.

(*b.*) A threatens Z that unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this Section.

Uncog. Bailable. Warrant.

Word or gesture intended to insult the modesty of a woman.

*509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. M. of D.

Do. Do. Warrant.

Misconduct in public by a drunken person.

*510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person (11), shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to Ten Rupees, or with both. Any Mag.

By Penal Code, punishment for being drunk, simple imprisonment for 24 hours, or 10 Rupees fine, or both.

By Section 34, Clause 6 of Act V of 1861 (Police Act), offender is liable to imprisonment for 8 days—fine up to Rupees 50. Cannot give him both fine and imprisonment.

It appears that by Section 510, P. C., the offender *must* cause annoyance, whereas by Section 34, Clause 6, Act V, 1861, "any person who is found drunk or riotous, *or who is incapable of taking care of himself*," is punishable.

CHAPTER XXIII.

تیئسوان باب

OF ATTEMPTS TO COMMIT OFFENCES.

جرمون جس بعبور دریاے شور کا بیان

An attempt to commit an offence is not punishable by whipping.—Letter No. 425 of 1864, H. C., Calcutta.

Ct. by which the offence attempted is triable.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

اون جرمونکه ارتکاب کا اقدام جسکي پادایش مین جس بعبور شور دریاے مقررهی

511. Whoever attempts to commit an offence (40) punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act (33) towards the commission of the offence, shall, where no express provision (express provision is made for offences against the State, Chapter VI) is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment—

According as the offence is one in respect of which Police may arrest without warrant or not. According as the offence contemplated by offender is bailable or not.

According as the offence is one in respect of which a summons or warrant shall ordinarily issue

tend to one-half of the longest term (57) provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a.*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this Section.

(*b.*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt, in consequence of Z's having nothing in his pocket. A is guilty under this Section.

ACT VI. OF 1864.

Received the assent of His Excellency the Governor-General on the 18th February, 1864.

An Act to authorize the punishment of Whipping in certain cases. (Supreme.)

CIRCULAR No. 2.

To

ALL SESSIONS JUDGES AND MAGISTRATES.

Dated Calcutta, the 8th April, 1864.

High Court of Judicature at Fort William in Bengal.
CRIMINAL SIDE.
Present
The Hon'ble H. T. Raikes, Judge.

The Court deemed it necessary to call the special attention of all Criminal Authorities to the provisions of Act VI. of 1864, which has recently been passed by the Legislative Council of India, and received the assent of the Governor-General on the 18th February last.

2. Section I directs that whipping shall be one of the punishments to which offenders under the Penal Code shall be liable, and the mode of inflicting this punishment has, under the authority vested in the Lieutenant-Governor by Section 10, been declared* as follows : "that it shall in the case of an adult be with a ratan on the breech." The Government further enjoin that on all occasions precautions should be taken to prevent the blows from "falling on any other part of the person."

* Circular of the Government of Bengal to all Commissioners, No 1329, dated 29th February, 1864.

3. Particular care should be taken in making the distinction between Sections II, III, and IV. By Section II it is enacted that for certain specified offences whipping may be administered *in lieu* of any punishment to which the convict may, for any of those offences, be liable under the Indian Penal Code; whereas by Section III it is enacted that if he has been previously convicted under the Penal Code of any of those offences, and shall again be convicted of the *same* offence, he may be punished with whipping *in lieu* of, or *in addition* to, any other punishment to which he may for such offence be liable under the Indian Penal Code.

4. By Section IV, however, it is enacted that whoever, having been *previously* convicted of any of the offences, specified in this Section of the Act, shall be *again* convicted of the *same* offences, may be punished with whipping *in addition* to any other punishment to which he may be liable under the Indian Penal Code.

5. It should be remarked under Sections III and IV, both convictions must be for the *same* offence, which must be one of the offences specified in Sections II and IV, respectively, in order to render the offender liable to whipping in *addition* to any other punishment, and that under Section IV the punishment of whipping *cannot* be inflicted *in lieu* of any other punishment to which a person twice committing any one of the offences therein specified is liable, but may be in addition to such punishment. And Sessions Judges should bear in mind that under Section VII no person who may be sentenced to death or transportation, or to penal servitude or to imprisonment *for more than five years*, shall be punished with whipping.

6. Section V provides for the whipping of juvenile offenders convicted of any offence which is not punishable by the Indian Penal Code with death. It should be observed that the punishment of whipping may be administered only *in lieu* of any other punishment, and that it may be inflicted for a first or any other offence. The whipping of juveniles is by Section X declared to be inflicted in the way of school discipline with a light ratan.

7. Section VI provides for exceptional cases, not of general application.

8. Under Section VII no female should be punished with whipping. The latter part of this Section which would apply only to Sessions Judges has already been noticed.

9. Section VIII declares that no Officer under the grade of a Subordinate Magistrate of the 1st Class shall be competent to pass a sentence of whipping, unless he shall have been expressly empowered by Government.

10. Under Section IX, in cases in which a sentence of whipping is passed under Sections III and IV in *addition* to

imprisonment, if the sentence be open to revision by a Superior Court the whipping must not be inflicted until 15 days from the date of such sentence, or until the sentence be confirmed by the Superior Court; but it should be inflicted without delay after the expiry of this term or after receipt of the Superior Court confirming that sentence.

11. It has already been stated that the Lieutenant-Governor has, under the power vested in him by Section X., declared that the rattan shall be employed in the whipping of adults, and it, therefore, only remains to point out that 30 stripes is the maximum of punishment, and that the whipping must be inflicted in the presence of a Justice of the Peace or a Magistrate of any grade, and that unless the Court passing sentence shall otherwise order, a medical officer must also be present.

12. Particular attention of all Magistrates should be directed to Section XI, which prohibits the execution of a sentence of whipping when the offender is not in a fit state of health to undergo the punishment, or the infliction of whipping by instalments.

13. Section XII enacts the procedure in cases in which *no part* of a sentence of whipping has been carried into execution for any of the reasons specified in Section XI.

14. The Court expect that great care will be exhibited by all Criminal Officers in exercising the powers vested in them by Act VI. of 1864, and that, after this full explanation of its provisions, no irregularities will occur in conforming strictly therewith.

Preamble.

Whereas it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—

Whipping added to the punishments described in Section 53 of the Penal Code.

1. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

II. Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the Indian Penal Code, that is to say :—

1. Theft, as defined in Section 378 of the said Code.

2. Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.

3. Theft by a clerk or servant, as defined in Section 381 of the said Code.

4. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

5. Extortion by threat, as defined in Section 388 of the said Code.

6. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

7. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

8. Dishonestly receiving property stolen in the commission of a dacoity, as defined in Section 412 of the said Code.

9. Lurking house-trespass, or house-breaking as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

10. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

An Appeal from an order passed under this Section is allowed, to ascertain the correctness of a sentence already carried out with a view to a second conviction. See note on Section 4, dated 12th March, 1868.

LETTER No. 314 OF 1864.—HIGH COURT, CALCUTTA.

On the question being put, the Court ruled that there was an Appeal from an order passed under Section 2, Act VI. of 1864, for the infliction of the punishment of whipping in lieu of other punishment, and that the sentence should be carried into effect without delay. Consequently, the effect of the Appeal in such cases will be to ascertain the correctness of a sentence already carried out, and not to bring under review the sentence itself with a view to its revision.

The meaning of Section 2, Act VI, seems to the Court clear *viz.*, that certain offences may be punished with whipping "in lieu of any punishment" which may be awarded for such offence under Penal Code; or, in other words, in lieu of any of, it may be, several alternative punishments which may be awarded, whether such punishment be simple or complex, *i. e.*, be imprisonment only, fine only, *or both.* The Court hold where whipping is awarded in *lieu of any other punishment, it must be the sole* punishment, and therefore that fine can in no case be superadded. The reference to Section 53, Penal Code, in Section 1 of Act VI, 1864, is simply that whipping is to be added to the list of punishments described in Section 53, Penal Code, not that it may be a

additional punishment in the case of each offence punished. The resort to whipping will render it impossible to award compensation to the person suffering loss by the offence punished. But compensation to the sufferer is not the primary object of the punishments of the Penal Code, which, indeed, takes no notice of such compensation as one of the objects of punishment. It is clear from the wording of Section 44, C. C. P., that the intention and meaning of that Section are not, that fine should be inflicted in order that compensation may be awarded, but that when fine is imposed upon conviction of any offence made punishable by fine, such fine may be awarded as compensation to the person who suffered loss by such offence, &c., &c. The Court are therefore of opinion that it was contemplated by the Legislature that compensation could only be awarded in those cases in which fine was imposed, and that where fine was not part of the punishment, compensation could not be awarded. It follows of course from the above view, that in cases in which whipping is awarded in lieu of any other punishment, compensation cannot be obtained through means of the Criminal Courts under Section 44, C. C. P., and can only be obtained by means of a civil action. From Registrar, N. W. P., No. 972, of 1864, Circular 63 of 1864, J. C. O.

On second conviction of any offence mentioned in last Section, whipping may be added to other punishment.

III. Whoever, having been previously convicted of any one of the offences specified in the last preceding Section, shall again be convicted of the same offence, may be punished with whipping in lieu of, or in addition to, any other punishment to which he may for such offence be liable under the Indian Penal Code.

In order to legalize the punishment of stripes under Act VI of 1864, the offence must have been the same in both convictions. Queen *vs.* Amarut Sheikh, 28th October, 1865, H. Ct., Calcutta.

Illustration.

A was charged on two counts; 1st, with theft in a building under Section 380, P. C.; 2nd, with dishonestly receiving stolen

property, Section 411, P. C. A was found guilty on both counts. Two years prior to this he had been convicted of receiving stolen property under Section 411, P. C. A was sentenced under Section 3, Act VI. of 1864, to 15 stripes in addition to 3½ years' imprisonment. This was illegal. Because if A was found guilty on 1st count, theft in a building, the Judge should have brought in a formal verdict of not guilty, on the second count, knowingly having in possession stolen property being under the circumstances part and parcel of the original offence of theft. And having been convicted on the first count, theft, the punishment of stripes in addition to imprisonment was illegal, as the offence *must* be the *same in both convictions.*

Offences punishable in case of second conviction, with whipping in addition to other punishment.

IV. Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code, that is to say :—

1. Giving or fabricating false evidence in such manner as to be punishable under Section 193 of the Indian Penal Code.

2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.

3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.

4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.

5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.

6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Robbery or Dacoity, as defined in Sections 390 and 391 of the said Code.

9. Attempting to commit Robbery, as defined in Section 393 of the said Code.

10. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

11. Habitually receiving or dealing in stolen property, as defined in Section 413 of the said Code.

12. Forgery, as defined in Section 463 of the said Code.

13. Forgery of a document, as defined in Section 466 of the said Code.

14. Forgery of a document, as defined in Section 467 of the said Code.

15. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

16. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of said Code.

17. Lurking house-trespass or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

18. Lurking house-trespass by night or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this Section.

CIRCULAR ORDER No. 2, DATED 6TH APRIL, 1868. HIGH COURT, CALCUTTA.

The attention of all Officers entrusted with the administration of criminal justice is called to two points which have been decided by the majority of the Judges composing the Full Bench Court.

It has been decided—

I.—That when a person, who has not been "previously convicted," (using the term in the sense in which it is used in Section 4, Act VI of 1864,) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of these offences *in addition* to imprisonment or fine for the other or others; but that it is not illegal to sentence him to *one whipping in lieu of all other punishment.*

II.—That when a person, who has been "previously convicted," is convicted at one time of two or more offences, he may be puni shed with one, but only *one*, whipping *in addition to* any other punishment to which, under Section 46 of the Code of Crimina Procedure, he may be liable.

21t

The Co the urt take this opportunity of impressing upon all officers vested w the ith power to pass sentences of whipping, that such sentences witl should be passed with the utmost caution, and with due delib war eration; and that if any doubt is felt, either as to the legality c r propriety (in any particular case) of passing a sentence of whipping, such a sentence ought not to be passed.

For full report, *vide* Wyman's Reporter, dated 18th May, 1868, Vol. V, No. 10, p. 45, Criminal.

It must be borne in mind that above Ruling concerns Sections 2 and 4, and has nothing to do with Section 3, under provisions of which a Magistrate can give 2 years' imprisonment and 30 lashes.

LETTER No. 425 OF 1864.—HIGH COURT, CALCUTTA.

The following question was put for the opinion of the Court :—

"A was sentenced to 12 months' imprisonment, before the Supreme Court, for house-breaking and lurking in 1859.

"He was found guilty in May 1864, of house-breaking, with intent to commit theft under Section 454 of the Indian Penal Code. Is A then liable under Section 4 of Act VI. of 1864, to be whipped in addition to the penalties prescribed in the said Section of the Indian Penal Code, or does Section 4 of Act VI. of 1864, refer to a previous conviction under the Indian Penal Code ?"

The Court replied that the previous conviction referred to in Sections 3 and 4 of Act VI. of 1864, must be one of an offence *under the Penal Code ;* the offence alluded to in both Sections being such and such an offence *as is specified in a particular Section of the Code;* and that, consequently, a conviction under the law in force before the enactment of the Penal Code will not bring an offender within Sections 3 and 4 of Act VI. of 1864.

The question was also put as to whether an offender could whipped for the abetment of an offence punishable under Act of 1864, with whipping ; as also whether with reference to Se 511 of the Penal Code, an attempt to commit an offence able with whipping could be punished with whipping.

The Court concurred in opinion with the Sessions Ju "a person who abets an offence which is punishable by is liable to be punished by whipping, if the act abetted, say, the offence which is punishable by whipping, is co in consequence of the abetment. But the abettor wo